AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

4-6-87
Vol. 52 No. 65
Pages 10875-11018

# federal register

Monday
April 6, 1987

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# Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## MERIT SYSTEMS PROTECTION BOARD

### 5 CFR Part 1201

### Practice and Procedure; Realignment of Regional Offices

**AGENCY:** Merit Systems Protection Board.

**ACTION:** Final rule.

**SUMMARY:** The Merit Systems Protection Board (the Board) announces a realignment of the geographical jurisdiction of its regional offices. The realignment affects the New York, Philadelphia, and Washington, DC Regional Offices.

**EFFECTIVE DATE:** April 6, 1987.

**FOR FURTHER INFORMATION CONTACT:** Michael W. Doheny, (202) 653–7980.

**SUPPLEMENTARY INFORMATION:** The Board announces the realignment of the geographical jurisdiction of its New York, Philadelphia, and Washington, DC regional offices. As a result of the jurisdictional changes, the Board will be more responsive to the needs of appellant and agency clients.

When agencies effect actions that are appealable to the Board, they must inform the affected employees of their appeal rights, and of the correct MSPB regional office address to which their appeals should be sent. Accordingly, agencies and other interested parties should carefully review the regional offices jurisdictional boundary changes in Appendix II.

### Regulatory Flexibiliy Act

The Clerk, Merit Systems Protection Board, certifies that the Board is not required to prepare an initial or final regulatory analysis of this rule pursuant to section 603 or 604 of the Regulatory Flexibility Act, because of the determination that this rule would not have a significant economic impact on a substantial number of small entities, including small business, small organizational units and small governmental jurisdictions.

### List of Subjects in 5 CFR Part 1201

Government employees, Administrative practice and procedures, Civil rights.

### PART 1201—[AMENDED]

Accordingly, Appendix II to 5 CFR Part 1201 is revised to read as follows:

#### Appendix II to Part 1201—Appropriate Regional Office for Filing Appeals

All submissions shall be addressed to the Regional Director, Merit Systems Protection Board, at the below listed addresses, according to the geographic region of the employing agency or as required by 5 CFR 1201.4(e).

Address of Appropriate Regional Office and Area Served:

1. Atlanta Regional Office, Suite 500, 1365 Peachtree Street, NE., Atlanta, Georgia 30309–3199 (Alabama, Florida, Georgia, Mississippi, North Carolina, South Carolina).
2. Boston Regional Office, 10 Causeway Street, Suite 1078, Boston, Massachusetts 02222–1042 (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont).
3. Chicago Regional Office, 230 South Dearborn Street, 31st Floor, Chicago, Illinois 60604–1669 (Illinios, Indiana, Michigan, Minnesota, Ohio, Wisconsin).
4. Dallas Regional Office, 1100 Commerce Street, Suite 6F20, Dallas, Texas 75242–9979 (Arkansas, Louisiana, Oklahoma, Texas, Swan Island).
5. Denver Regional Office, 730 Simms Street, Suite 301, Golden, Colorado 80401–4720 (Arizona, Colorado, Kansas, Montana, Nebraska, Nevada, New Mexico, North Dakota, South Dakota, Utah, Wyoming).
6. New York Regional Office, 26 Federal Plaza, Suite 2339, New York, New York 10278–0022 (New Jersey [Bergen, Essex, Hudson, Hunterdon, Morris, Passaic, Somerset, Sussex, Union and Warren Counties], New York, Puerto Rico, Virgin Islands).
7. Philadelphia Regional Office, U.S. Customhouse, Suite 501, Second and Chestnut Streets, Philadelphia, Pennsylvania 19106–2904 (Delaware, New Jersey [Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer, Middlesex, Monmouth, Ocean and Salem Counties], Pennsylvania, Virginia [except Alexandria and Falls Church City and Arlington, Fairfax, Loudoun and Prince William Counties], West Virginia).
8. St. Louis Regional Office, 911 Washington Avenue, Suite 615, St. Louis, Missouri 63101–1203 (Iowa, Kentucky, Missouri, Tennessee).
9. San Francisco Regional Office, 525 Market Street, Suite 2800, San Francisco, California 94105–2789 (California).
10. Seattle Regional Office, 915 Second Avenue, Suite 1840, Seattle Regional Office 98174–1001 (Alaska, Hawaii, Idaho, Oregon, Washington, Pacific overseas).
11. Washington Regional Office, 5203 Leesburg Pike, Suite 1109, Falls Church, Virginia 22041–3473 (Maryland, Washington, DC, Virginia [Alexandria, Falls Church City, and Arlington, Fairfax, Loudoun and Prince William Counties], all overseas areas not otherwise covered).

Dated: April 1, 1987.

**Robert E. Taylor,**

*Clerk of the Board.*

[FR Doc. 87–7534 Filed 4–3–87; 8:45 am]

BILLING CODE 7400–01–M

## FEDERAL RESERVE SYSTEM

### 12 CFR Part 226

**[Reg. Z; TIL–1]**

### Truth in Lending; Official Staff Commentary Update

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Final official staff interpretation.

**SUMMARY:** The Board is publishing in final form changes to the official staff commentary to Regulation Z (Truth in Lending). The commentary applies and interprets the requirements of Regulation Z and is a substitute for individual staff interpretations of the regulation. The revisions address a variety of questions that have arisen about the regulation, and include new material and changes in existing material.

As a result of the increased use of home-equity lines of credit and second mortgage loans, partly due to the new limitations on the deductibility of non-business interest expenses under the revised federal tax laws, the Board has received a number of inquiries concerning real estate-secured extensions of credit. These questions are addressed by several revisions, one of which clarifies the rules that apply when a creditor adds a security interest in the consumer's principal dwelling to a transaction that was previously exempt from the regulation.

The update includes a variety of other revisions including clarification of the

exception from the finance charge for participation or membership fees under § 226.4(c)(4), and clarification of the prohibition against offsetting a consumer's credit card indebtedness with funds from a deposit account held with a credit card issuer under § 226.12(d).

**DATES:** Effective April 1, 1987, but compliance optional until October 1, 1987.

**FOR FURTHER INFORMATION:** Contact the following attorneys in the Division of Consumer and Community Affairs at (202) 452–3667 or (202) 452–3867:

Open-end—Kathleen Brueger, Heather Hansche, Susan Kraeger

Closed-end—Sharon Bowman, Leonard Chanin, Adrienne Hurt, Thomas Noto

For the hearing impaired *only*, Telecommunications Device for the Deaf (TDD), Earnestine Hill or Dorothea Thompson at (202) 452–3544, Board of Governors of the Federal Reserve System, Washington, DC 20551.

**SUPPLEMENTARY INFORMATION:**

**(1) General**

The Truth in Lending Act (15 U.S.C. 1601 *et seq.*) governs consumer credit transactions and is implemented by the Board's Regulation Z (12 CFR Part 226). Effective October 13, 1981, an official staff commentary (TIL–1, Supp. I to 12 CFR Part 226) was published to interpret the regulation. The commentary is designed to provide guidance to creditors in applying the regulation to specific transactions. The commentary is updated periodically to address significant questions that arise. There have been five general updates so far. This notice contains the sixth general update, which was proposed for comment on December 2, 1986 (51 FR 43372). The changes are effective on April 1, 1987. Although creditors are free to rely on the provisions as of that date and are protected if they do so, they need not follow the revisions until October 1, 1987.

**(2) Revisions**

The following is a brief description of the revisions to the commentary:

*Subpart A—General*

*Section 226.2—Definitions and Rules of Construction— 2(a) Definitions—2(a)(20) "Open-End Credit".* Comment 2(a)(20)–4 is amended to further clarify that an open-end credit plan may exist even though the creditor does not normally impose a finance charge, provided the creditor has the right to impose a finance charge from time to time on the outstanding balance.

*Section 226.3—Exempt Transactions*— 3(b) Credit Over $25,000 Not Secured by Real Property or a Dwelling—Comment 3(b)–2 is amended to clarify that an open-end credit plan which was exempt from the regulation's coverage under § 226.3(b) becomes subject to the regulation when a security interest is taken in any real property, or in personal property used or expected to be used as the consumer's principal dwelling. As a result, creditors must give the consumer an initial disclosure statement reflecting the current account terms at the time such security interest is taken, and comply with the other provisions of the regulation applicable to open-end credit. If the security interest that is taken is in the consumer's principal dwelling, the creditor must also give the consumer the right to rescind the security interest.

Comment 3(b)–3 is amended to correct the reference to the $25,000 limitation and to add a reference to the consumer's principal dwelling in the first sentence. In addition, the caption "Refinanced obligations" has been changed to "Closed-end credit—subsequent changes" to more closely parallel the language used in the caption for the preceding comment on open-end credit. The revisions clarify the rule that disclosures for previously exempt closed-end credit transactions are required only when the existing obligation is satisfied and replaced by a new obligation. A cross reference to the commentary to § 226.23(a)(1), which discusses the right of rescission when a security interest in a consumer's principal dwelling is added to a previously exempt transaction, has also been added to the comment.

*Section 226.4—Finance Charge*—4(c) Charges Excluded from the Finance Charge—*Paragraph 4(c)(4).* Comment 4(c)(4)–1 is amended and a new comment 4(c)(4)–2 is added to clarify the types of charges that may be treated as participation or membership fees, and thus excluded from the finance charge. Specifically, comment 4(c)(4)–1 is amended to make clear that a one-time charge imposed when an account is opened, such as a loan origination fee, may not be treated as a participation fee. Comment 4(c)(4)–2 is added to make clear that fees based on either the degree of account activity or on the amount of credit available under the plan (such as a fee based on a percentage of the credit limit) are not participation fees and, if imposed, must be treated as finance charges.

*Subpart B—Open-End Credit*

*Section 226.5—General Disclosure Requirements*—5(b) Time of Disclosures—*5(b)(1) Initial disclosures.* Comment 5(b)(1)–1 is revised to make clear that, in general, the initial disclosure statement must be provided to the consumer before the consumer pays any fees or charges under the plan, including real estate charges of the type excluded from the finance charge in § 226.4(c)(7). However, the comment would continue to allow imposition of an application fee (§ 226.4(c)(1)) or membership fee (§ 226.4(c)(4)) prior to giving the initial disclosure statement; any membership fee imposed before the initial disclosures are given must be refunded if the consumer rejects the plan.

*Section 226.6—Initial Disclosure Statement*—6(b) *Other Charges*—Comment 6(b)–1 is amended by adding examples of the types of real estate charges included in § 226.4(c)(7). In addition, taxes and filing or notary fees excluded from the finance charge under § 226.4(e) are deleted as examples of an "other charge" in comment 6(b)–1, and comment 6(b)–2 is amended to include them as examples of what is not an "other charge." Since taxes and filing or notary fees excluded from the finance charge under § 226.4(e) must be itemized and disclosed, it is unnecessary to specifically require them to be treated as "other charges" in order to ensure that they are disclosed to the consumer. The creditor has the option of either itemizing and disclosing these fees separately under § 226.4(e), or including the fees as part of the initial disclosure statement as an "other charge" under § 226.6(b). Under either option, the creditor may disclose the amount of the fees or, alternatively, an explanation of how the amount will be determined.

6(c) *Security Interests.* Comments 6(c)–2 and 6(c)–4 are revised to take into account the Board's Credit Practices Rule, Subpart B of Regulation AA, 12 CFR Part 227, and the credit practices rules of the Federal Trade Commission and the Federal Home Loan Bank Board, 16 CFR Part 444 and 12 CFR Part 535, respectively. These rules declare it an unfair or deceptive act or practice for creditors to take or enforce a nonpurchase money, nonpossessory security interest in "household goods," as that term is defined by the rules. Some state laws also limit the availability of security interests in household goods. Comments 6(c)–2 and 6(c)–4 have been supplemented with parenthetical statements designed to alert creditors to the existence of these restrictions, rather than deleting the references to "household appliances" and "household goods" altogether, as was originally proposed.

*Section 226.7—Periodic Statement—7(f) Amount of Finance Charge.* A new comment 7(f)–8 is added to clarify that finance charges assessed at the time an account is opened must be disclosed on the periodic statement if they are financed under the plan.

7(h) *Other Charges.* Comment 7(h)–1 is amended to make clear that creditors may disclose real estate-related charges excluded from the finance charge under § 226.4(c)(7) as a single amount with a term such as "closing costs" on the periodic statement, if the charges were itemized and described by the same term on the initial disclosure. Creditors may continue, however, to disclose these charges on the initial disclosure statement by explaining how the charge will be determined (see § 226.6(b)).

*Section 226.12—Special Credit Card Provisions—12(d) Offsets by Card Issuer Prohibited—Paragraph 12(d)(2).* Comment 12(d)(2)–1 is revised to clarify that the security interest exception to the prohibition on offsetting a cardholder's indebtedness against funds on deposit with the card issuer does not include a security interest that is the functional equivalent of the right of offset. Therefore, security interests granted by language routinely included in credit card agreements are not within the exception. For the exception to apply, there must be some affirmative indication that the consumer is aware that a security interest is a condition for an account (or for more favorable terms on an account) and specifically intends to grant the security interest. In addition, to qualify for the exception, a security interest in the consumer's deposit account must be obtainable and enforceable by creditors generally. The revised comment eliminates the examples at the end of the previous comment since they are now incorporated in the requirements discussion.

*Section 226.15—Right of Rescission—15(c) Delay of Creditor's Performance.* Comment 15(c)–1 is amended to clarify that a creditor is not prohibited from disbursing funds during the rescission period when property subject to the right to rescind is added as security under an existing open-end credit plan.

Comment 15(c)–3 is revised to clarify that the examples of actions a creditor may take during the rescission period are permissible actions provided they are not prohibited by state law or other requirements. In addition, the caption "Permissible actions" has been changed to "Actions during the delay period." These revisions were prompted by the fact that some creditors mistakenly believed that the regulation authorized the accrual of finance charges during the rescission period, even when state law does not permit the practice. The revisions make it clear that the regulation neither authorizes nor prohibits the listed actions.

*Subpart C—Closed-End Credit*

*Section 226.18—Content of Disclosures—18(g) Payment Schedule—Paragraph 18(g)(2).* Comment 18(g)(2)–1 is reVised to incorporate a discussion of transactions in which interest and principal payments occur at different intervals. The revision clarifies that a creditor may disclose the two series of payments separately and use an abbreviated payment schedule for the interest payments. The revision also makes clear that this option is available for transactions in which interest and principal payments are scheduled on the same, as well as on different, dates of the month.

18(m) *Security Interest*—Comment 18(m)–2, addressing disclosure of nonpurchase money security interests, is revised to reflect the existence of the Board's Credit Practices Rule, Subpart B of Regulation AA, 12 CFR Part 227, and the credit practices rules of the Federal Trade Commission, 16 CFR Part 444, and the Federal Home Loan Bank Board, 12 CFR Part 535. These rules declare it an unfair or deceptive act or practice for creditors to take or enforce a nonpossessory, nonpurchase money security interest in "household goods," as that term is defined by the rules. Some state laws also limit the availability of security interests in household goods. Comment 18(m)–2 has therefore been supplemented with a parenthetical statement designed to alert creditors to the existence of these restrictions.

Rather than deleting the reference to "household goods" altogether, as was originally proposed, an additional example has been provided: "certain household items." Some creditors have expressed reluctance, in light of the credit practices rules, to use the term "household goods." Accordingly, the additional term has been provided in comment 18(m)–2 as an alternative means of describing this type of property.

*Section 226.20—Subsequent Disclosure Requirements—20(a) Refinancing—Paragraph 20(a)(2).* The discussion in comment 20(a)(2)–1 on what qualifies as a corresponding change in the payment schedule is deleted as a result of the addition of comment 20(a)(2)–2.

Comment 20(a)(2)–2 is added to clarify what is a corresponding change in the payment schedule that would not require new disclosures. The addition also makes clear that a reduction in the annual percentage rate accompanied by an increase in the term of the original obligation is an event requiring new disclosures.

*Section 226.23—Right of Rescission—23(a) Consumer's Right to Rescind—Paragraph 23(a)(1).* Comment 23(a)(1)–5 is modified to clarify the circumstances in which the addition of a security interest to an existing obligation is rescindable. The revised comment makes clear that if a security interest in the consumer's principal dwelling is added to a transaction that was previously exempt from the regulation (because it was credit over $25,000 not secured by real property or a principal dwelling), the consumer has the right to rescind the addition of that security interest even if the existing obligation is not satisfied and replaced by a new obligation. Finally, the term "preexisting" has been replaced by "existing" for consistency of terminology.

23(c) *Delay of Creditor's Performance*—Comment 23(c)–3 is revised to clarify that the examples of actions a creditor may take during the rescission period are permissible actions provided they are not prohibited by state law or other requirements. In addition, the caption "Permissible actions" has been changed to "Actions during the delay period" to reflect a more neutral statement of the subject of the comment. These revisions were prompted by the fact that some creditors mistakenly believed that the regulation authorized the accrual of finance charges during the rescission period, even if state law prohibited such a practice. The revisions make it clear that the regulation neither authorizes nor prohibits the listed actions.

23(f) *Exempt Transactions*—In December, the Board adopted an amendment to Regulation Z to redefine what constitutes a new advance of money to a consumer for purposes of the rescission exemption for refinancings with the original creditor. Under the amendment, a new advance of money to a consumer would no longer include amounts attributed solely to the costs of the refinancing. Comment 23(f)–4 has been changed to incorporate the revised definition of a new advance of money in a refinancing with the original creditor and to further explain what amounts are included and excluded when determining what constitutes a new advance. In a refinancing, if the new "amount financed" exceeds the unpaid principal balance, any earned unpaid finance charges on the existing debt, and the amounts attributable solely to

the costs of the refinancing, the consumer has the right of rescission as to the difference. Final comment 23(f)–4 differs from the proposal in that it explains that in determining whether there is a new advance in a refinancing, creditors may rely on the information stated in the latest Truth in Lending disclosure given to the consumer. Thus, for example, if the actual dollar amount of refinancing costs determined at the time a loan closes differs from that reflected in the latest Truth in Lending disclosure, the creditor may rely on the amounts contained in the disclosure in determining whether there is a new advance in the refinancing. A minor editorial change has also been made in the first sentence of this comment to clarify that a consolidation is a type of refinancing; no substantive change is intended.

*Appendix D—Multiple-Advance Construction Loans*

Comment Appendix D–5 is added to explain the way in which "interest reserves" for multiple-advance construction loans should be treated when a creditor uses appendix D to calculate the annual percentage rate and disclosures. The final comment provides that regardless of the amount of the interest reserve, it is not treated as a prepaid finance charge. The comment explains that if the consumer is permitted to make interest payments as they become due, the interest reserve should be disregarded in the disclosures and calculations under appendix D. The comment also provides, however, that if a creditor automatically deducts the interest payments from the interest reserve rather than allow the consumer to make the interest payments as they become due, the estimated interest must reflect the fact that interest will accrue on the interest payments as well as the other loan proceeds. The comment explains how to account for that accrual.

**List of Subjects in 12 CFR Part 226**

Advertising, Banks, Banking, Consumer protection, Credit, Federal Reserve System, Finance, Penalties, Truth in lending.

Pursuant to authority granted in section 105 of the Truth in Lending Act (15 U.S.C. 1604 as amended), the Board amends the official staff commentary to Regulation Z (12 CFR Part 226 Supp. I) as follows:

**1. Authority Citation**

The authority citation for Part 226 continues to read:

**Authority:** Sec. 105, Truth in Lending Act, as amended by sec. 605, Pub. L. 96–221, 94 Stat. 170 (15 U.S.C. 1604 *et seq.*).

**PART 226—[AMENDED]**

**2. Text of Revisions**

The commentary (TIL–1, Supplement I to 12 CFR Part 226) is amended by revising comments 2(a)(20)–4, 3(b)–2, 3(b)–3, and 4(c)(4)–1; by adding comment 4(c)(4)–2; by revising the first sentence of comment 5(b)(1)–1; by revising the third bulleted paragraph and removing the fourth bulleted paragraph of comment 6(b)–1; by adding a new bulleted paragraph at the end of comment 6(b)–2; by revising comment 6(c)–2; by adding parenthetical material at the end of comment 6(c)–4; by adding new comment 7(f)–8; by adding a new second sentence to comment 7(h)–1; by revising comment 12(d)(2)–1; by adding two new sentences at the end of comment 15(c)–1; by revising the heading and second sentence of comment 15(c)–3; by revising comments 18(g)(2)–1, 18(m)–2, 20(a)(2)–1; by adding comment 20(a)(2)–2; by revising comments 23(a)(1)–5, 23(c)–3, and 23(f)–4; and by adding comment app. D–5, to read as follows:

**Supplement I—Official Staff Interpretations**

* * * * *

**Subpart A—General**

* * * * *

*Section 226.2—Definitions and Rules of Construction*

2(a) Definitions

* * * * *

*2(a)(20) "Open-End Credit"*

* * * * *

4. *Finance charge on an outstanding balance.* The requirement that a finance charge may be computed and imposed from time to time on the outstanding balance means that there is no specific amount financed for the plan for which the finance charge, total of payments, and payment schedule can be calculated. A plan may meet the definition of open-end credit even though a finance charge is not normally imposed, provided the creditor has the right, under the plan, to impose a finance charge from time to time on the outstanding balance. For example, in some plans, such as certain "china club" plans, a finance charge is not imposed if the consumer pays all or a specified portion of the outstanding balance within a given time period. Such a plan could meet the finance charge criterion, if the creditor has the right to impose a finance charge, even though the consumer actually pays no finance charges during the existence of the plan because the consumer takes advantage of the option to pay the balance (either in full or in installments) within the time necessary to avoid finance charges.

* * * * *

*Section 226.3—Exempt Transactions*

* * * * *

*3(b) Credit Over $25,000 Not Secured by Real Property or a Dwelling.*

* * * * *

2. *Open-end credit.* An open-end credit plan is exempt under § 226.3(b) (unless secured by real property or personal property used or expected to be used as the consumer's principal dwelling) if either of the following conditions is met

- The creditor makes a firm commitment to lend over $25,000 with no requirement of additional credit information for any advances.
- The initial extension of credit on the line exceeds $25,000.

If a security interest is taken at a later time in any real property, or in personal property used or expected to be used as the consumer's principal dwelling, the plan would no longer be exempt. The creditor must comply with all of the requirements of the regulation including, for example, providing the consumer with an initial disclosure statement. If the security interest being added is in the consumer's principal dwelling, the creditor must also give the consumer the right to rescind the security interest. (See the commentary to § 226.15 concerning the right of rescission.)

3. *Closed-end credit—subsequent changes.* A closed-end loan for over $25,000 may later be rewritten for $25,000 or less, or a security interest in real property or in personal property used or expected to be used as the consumer's principal dwelling may be added to an extension of credit for over $25,000. Such a transaction is consumer credit requiring disclosures only if the existing obligation is satisfied and replaced by a new obligation made for consumer purposes undertaken by the same obligor. (See the commentary to § 226.23(a)(1) regarding the right of rescission when a security interest in a consumer's principal dwelling is added to a previously exempt transaction.)

* * * * *

*Section 226.4—Finance Charge*

* * * * *

*4(c) Charges Excluded from the Finance Charge*

* * * * *

*Paragraph 4(c)(4)*

1. *Participation fees—periodic basis.* The participation fees mentioned in § 226.4(c)(4) do not necessarily have to be formal membership fees, nor are they limited to credit card plans. The provision applies to any credit plan in which payment of a fee is a condition of access to the plan itself, but it does not apply to fees imposed separately on individual closed-end transactions. The fee may be charged on a monthly, annual, or other periodic basis; a one-time, non-recurring fee imposed at the time an account is opened is not a fee that is charged on a

periodic basis, and may not be treated as a participation fee.

2. *Participation fees—exclusions.* Minimum monthly charges, charges for non-use of a credit card, and other charges based on either account activity or the amount of credit available under the plan are not excluded from the finance charge by § 226.4(c)(4). Thus, for example, a fee that is charged and then refunded to the consumer based on the extent to which the consumer uses the credit available would be a finance charge. (See the commentary to § 226.4(b)(2).)

* * * * *

**Subpart B—Open-End Credit**

*Section 226.5—General Disclosure Requirements*

* * * * *

*5(b) Time of Disclosures—5(b)(1) Initial Disclosures*

1. *Disclosure before the first transaction.* The rule that the initial disclosure statement must be furnished "before the first transaction" requires delivery of the initial disclosure statement before the consumer becomes obligated on the plan. For example, the initial disclosures must be given before the consumer makes the first purchase, receives the first advance, or pays any fees or charges under the plan other than an application fee or refundable membership fee (see below). * * *

* * * * *

*Section 226.6—Initial Disclosure Statement*

* * * * *

*6(b) Other Charges*

1. *General; examples of other charges.* Under § 226.6(b), significant charges related to the plan (that are not finance charges) must also be disclosed. For example: * * *

• Charges imposed in connection with real estate transactions such as title, appraisal, and credit report fees (See § 226.4(c)(7)) * * *

2. *Exclusions.* The following are examples of charges that are not "other charges": * * *

• Taxes and filing or notary fees excluded from the finance charge under § 226.4(e).

*6(c) Security Interests*

* * * * *

2. *Identification of property.* Identification of the collateral by type is satisfied by stating, for example, "motor vehicle" or "household appliances." (Creditors should be aware, however, that the federal credit practices rules, as well as some state laws, prohibit certain security interests in household goods.) The creditor may, at its option, provide a more specific identification (for example, a model and serial number).

* * * * *

4. *Additional collateral.* * * * (See comment 6(c)–2.)

* * * * *

*Section 226.7—Periodic Statement*

* * * * *

*7(f) Amount of Finance Charge*

* * * * *

8. *Start-up fees.* Points, loan fees, and similar finance charges relating to the opening of the account that are paid prior to the issuance of the first periodic statement need not be disclosed on the periodic statement. If, however, these charges are financed as part of the plan, including charges that are paid out of the first advance, the charges must be disclosed as part of the finance charge on the first periodic statement. However, they need not be factored into the annual percentage rate. (See footnote 33 in the regulation.)

* * * * *

*7(h) Other Charges*

1. *Identification.* In identifying any "other charges" actually imposed during the billing cycle, the type is adequately described as "late charge" or "membership fee," for example. Similarly, "closing costs" or "settlement costs," for example, may be used to describe charges imposed in connection with real estate transactions that are excluded from the finance charge under § 226.4(c)(7), if the same term (such as "closing costs") was used in the initial disclosures and if the creditor chose to itemize and individually disclose the costs included in that term. (See comment 6(b)–1 for examples of "other charges.")

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*Section 226.12—Special Credit Card Provisions*

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*12(d) Offsets by Card Issuer Prohibited*

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*Paragraph 12(d)(2)*

1. *Security interest—limitations.* In order to qualify for the exception stated in § 226.12(d)(2), a security interest must be affirmatively agreed to by the consumer and must be disclosed in the issuer's initial disclosures under § 226.6. The security interest must not be the functional equivalent of a right of offset; as a result, routinely including in agreements contract language indicating that consumers are giving a security interest in any deposit accounts maintained with the issuer does not result in a security interest that falls within the exception in § 226.12(d)(2). For a security interest to qualify for the exception under § 226.12(d)(2) the following conditions must be met:

• The consumer must be aware that granting a security interest is a condition for the credit card account (or for more favorable account terms) and must specifically intend to grant a security interest in a deposit account. Indicia of the consumer's awareness and intent could include, for example:

—Separate signature or initials on the agreement indicating that a security interest is being given

—Placement of the security agreement on a separate page, or otherwise separating the security interest provisions from other contract and disclosure provisions

—Reference to a specific amount of deposited funds or to a specific deposit account number

• The security interest must be obtainable and enforceable by creditors generally. If other creditors could not obtain a security interest in the consumer's deposit accounts to the same extent as the card issuer, the security interest is prohibited by § 226.12(d)(2).

* * * * *

*Section 226.15—Right of Rescission*

* * * * *

*15(c) Delay of Creditor's Performance*

1. *General rule.* Until the rescission period has expired and the creditor is reasonably satisfied that the consumer has not rescinded, the creditor must not, either directly or through a third party:

• Disburse advances to the consumer.

• Begin performing services for the consumer.

• Deliver materials to the consumer.

A creditor may, however, continue to allow transactions under an existing open-end credit plan during a rescission period that results solely from the addition of a security interest in the consumer's principal dwelling. (See comment 15(c)–3 for other actions that may be taken during the delay period.)

* * * * *

3. *Actions during the delay period.* Section 226.15(c) does not prevent the creditor from taking other steps during the delay, short of beginning actual performance. Unless otherwise prohibited, such as by state law, the creditor may, for example:

• Prepare the cash advance check.

• Perfect the security interest.

• Accrue finance charges during the delay period.

* * * * *

**Subpart C—Closed-End Credit**

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*Section 226.18—Content of Disclosures*

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*18(g) Payment Schedule*

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*Paragraph 18(g)(2)*

1. *Abbreviated disclosure.* The creditor may disclose an abbreviated payment schedule when the amount of each regularly scheduled payment (other than the first or last payment) includes an equal amount to be applied on principal and a finance charge computed by application of a rate to the decreasing unpaid balance. This option is also available when mortgage-guarantee insurance premiums, paid either monthly or annually, cause variations in the amount of the scheduled payments, reflecting the continual decrease or increase in the premium due. In addition, in transactions where payments vary because interest and principal are paid at different intervals, the two series of payments may be disclosed separately and the abbreviated payment schedule may be used for the interest payments. For example, in transactions with fixed quarterly principal payments and monthly interest payments based on the outstanding principal balance, the amount of

the interest payments will change quarterly as principal declines. In such cases the creditor may treat the interest and principal payments as two separate series of payments, separately disclosing the number, amount, and due dates of principal payments, and, using the abbreviated payment schedule, the number, amount, and due dates of interest payments. This option may be used when interest and principal are scheduled to be paid on the same date of the month as well as on different dates of the month. The creditor using this alternative must disclose the dollar amount of the highest and lowest payments and make reference to the variation in payments.

* * * * *

*18(m) Security Interest*

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2. *Nonpurchase money transactions.* In nonpurchase money transactions, the property subject to the security interest must be identified by item or type. This disclosure is satisfied by a general disclosure of the category of property subject to the security interest, such as "motor vehicles," "securities," "certain household items," or "household goods." (Creditors should be aware, however, that the federal credit practices rules, as well as some state laws, prohibit certain security interests in household goods.) At the creditor's option, however, a more precise identification of the property or goods may be provided.

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*Section 226.20—Subsequent Disclosure Requirements 20(a) Refinancings*

* * * * *

*Paragraph 20(a)(2)*

1. *Annual percentage rate reduction.* A reduction in the annual percentage rate with a corresponding change in the payment schedule is not a refinancing. If the annual percentage rate is subsequently increased (even though it remains below its original level) and the increase is effected in such a way that the old obligation is satisfied and replaced, new disclosures must then be made.

2. *Corresponding change.* A corresponding change in the payment schedule to implement a lower annual percentage rate would be a shortening of the maturity, or a reduction in the payment amount or the number of payments of an obligation. The exception in § 226.20(a)(2) does not apply if the maturity is lengthened, or if the payment amount or number of payments is increased beyond that remaining on the existing transaction.

* * * * *

*Section 226.23—Right of Rescission*

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*23(a) Consumer's Right to Rescind*

*Paragraph 23(a)(1)*

* * * * *

5. *Addition of a security interest.* Under footnote 47, the addition of a security interest in a consumer's principal dwelling to an existing obligation is rescindable even if the existing obligation is not satisfied and replaced by a new obligation, and even if the existing obligation was previously exempt (because it was credit over $25,000 not secured by real property or a consumer's principal dwelling). The right of rescission applies only to the added security interest, however, and not to the original obligation. In those situations, only the § 226.23(b) notice need be delivered, not new material disclosures; the rescission period will begin to run from the delivery of the notice.

* * * * *

*23(c) Delay of Creditor's Performance*

* * * * *

3. *Actions during the delay period.* Section 226.23(c) does not prevent the creditor from taking other steps during the delay, short of beginning actual performance. Unless otherwise prohibited, such as by state law, the creditor may, for example:

- Prepare the loan check.
- Perfect the security interest.
- Prepare to discount or assign the contract to a third party.
- Accrue finance charges during the delay period.

* * * * *

*23(f) Exempt Transactions*

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4. *New advances.* The exemption in § 226.23(f)(2) applies only to refinancings (including consolidations) by the original creditor. If the refinancing involves a new advance of money, the amount of the new advance is rescindable. In determining whether there is a new advance, a creditor may rely on the amount financed, refinancing costs, and other figures stated in the latest Truth in Lending disclosures provided to the consumer and is not required to use, for example, more precise information that may only become available when the loan is closed. For purposes of the right of rescission, a new advance does not include amounts attributed solely to the costs of the refinancing. These amounts would include § 226.4(c)(7) charges (such as attorneys fees and title examination and insurance fees, if bona fide and reasonable in amount), as well as insurance premiums and other charges that are not finance charges. (Finance charges on the new transaction—points, for example—would not be considered in determining whether there is a new advance of money in a refinancing since finance charges are not part of the amount financed.) To illustrate, if the sum of the outstanding principal balance plus the earned unpaid finance charge is $50,000 and the new amount financed is $51,000, then the refinancing would be exempt if the extra $1,000 is attributed solely to costs financed in connection with the refinancing that are not finance charges. Of course, if new advances of money are made (for example, to pay for home improvements) and the consumer exercises the right of rescission, the consumer must be placed in the same position as he or she was in prior to entering into the new credit transaction. Thus, all amounts of money (which would include all the costs of the refinancing) already paid by the consumer to the creditor or to a third party as part of the refinancing would have to be refunded to the consumer. (See the commentary to § 226.23(d)(2) for a discussion of refunds to consumers.) A model rescission notice applicable to transactions involving new advances appears in Appendix H.

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**Appendix D—Multiple-Advance Construction Loans**

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5. *Interest reserves.* In a multiple-advance construction loan, a creditor may establish an "interest reserve" to ensure that interest is paid as it accrues by designating a portion of the loan to be used for paying the interest that accrues on the loan. An interest reserve is not treated as a prepaid finance charge, whether the interest reserve is the same as or different from the estimated interest figure calculated under Appendix D.

- If a creditor permits a consumer to make interest payments as they become due, the interest reserve should be disregarded in the disclosures and calculations under Appendix D.
- If a creditor requires the establishment of an interest reserve and automatically deducts interest payments from the reserve amount rather than allow the consumer to make interest payments as they become due, the fact that interest will accrue on those interest payments as well as the other loan proceeds must be reflected in the calculations and disclosures. To reflect the effects of such compounding, a creditor should first calculate interest on the commitment amount (exclusive of the interest reserve) and then add the figure obtained by assuming that one-half of that interest is outstanding at the contract interest rate for the entire construction period. For example, using the example shown under paragraph A, part I of Appendix D, the estimated interest would be $1,117.68 ($1093.75 plus an additional $23.93 calculated by assuming half of $1093.75 is outstanding at the contract interest rate for the entire construction period), and the estimated annual percentage rate would be 21.18%.

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Board of Governors of the Federal Reserve System, March 31, 1987.

William W. Wiles,

*Secretary of the Board.*

[FR Doc. 87-7410 Filed 4-3-87; 8:45 am]

BILLING CODE 6210-01-M

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

### 14 CFR Part 1215

### Tracking and Data Relay Satellite System (TDRSS)

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Final rule.

**SUMMARY:** NASA is amending 14 CFR Part 1215, "Tracking and Data Relay Satellite System (TDRSS)," by revising

Appendix A to reflect the estimated service rates in 1988 dollars for TDRSS standard services, based on NASA escalation estimates. 14 CFR Part 1215 sets forth the policy governing the Tracking and Data Relay Satellite System (TDRSS) services provided to non-U.S. Government users and the reimbursement for rendering such services. The TDRSS represents a major investment by the U.S. Government with the primary goal of providing improved tracking and data acquisition services to spacecraft in low earth orbit or to terrestrial users.

**EFFECTIVE DATE:** April 6, 1987.

**ADDRESS:** Office of Space Operations, Code T, NASA Headquarters, Washington, DC 20546.

**FOR FURTHER INFORMATION CONTACT:** Eugene Ferrick, 202–453–2030.

**SUPPLEMENTARY INFORMATION:** The existing regulation was published in the **Federal Register** on March 9, 1983 (48 FR 9845). Each year since that time, 14 CFR Part 1215 has been amended by revising Appendix A to reflect the rate changes for the appropriate calendar years (CY). Since this revision of Appendix A to 14 CFR Part 1215 reflects the rate changes for CY 1988 and involves NASA management procedures and decisions, no public comment is required.

The National Aeronautics and Space Administration has determined that this rule is not subject to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 through 612, since it will not exert a significant economic impact on a substantial number of small entities, and it is not a major rule as defined in Executive Order 12291.

**List of Subjects in 14 CFR Part 1215**

Satellites, Tracking and Data Relay Satellite System, Communications equipment, Government contract.

## PART 1215—TRACKING AND DATA RELAY SATELLITE SYSTEM (TDRSS)

For reasons set out in the Preamble, 14 CFR Part 1215 is amended to read as follows:

1. The authority citation for Part 1215 continues to read as follows:

**Authority:** Sec. 203, Pub. L. 85–568, 72 Stat. 429, as amended; 42 U.S.C. 2473.

2. Appendix A is revised to read as follows:

**Appendix A—Estimated Service Rates in 1988 Dollars for TDRSS Standard Services (Based on NASA Escalation Estimate)**

TDRSS user service rates for services rendered in CY–88 based on current projections in 1988 dollars are as follows:

*Single Access Service*

Forward command, return telemetry, or tracking, or any combination of these, the base rate is $128.00 per minute for non-U.S. Government users.

*Multiple Access Forward Service*

Base rate is $:.8.00 per minute for non-U.S. Government users.

*Multiple Access Return Service*

Base rate is $9.00 per minute for non-U.S. Government users.

**Charles T. Force,**

*Deputy Associate Administrator for Space Operations.*

[FR Doc. 87–7449 Filed 4–3–87; 8:45 am]

**BILLING CODE 7510–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 5

### Delegations of Authority and Organization; Center for Drugs and Biologics

**AGENCY:** Food and Drug Administration.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the regulations for delegations of authority by adding a new delegation to officials in the Center for Drugs and Biologics from the Commissioner of Food and Drugs. The authority relates to the submission of and effective approval dates for abbreviated new drug applications and certain new drug applications.

**EFFECTIVE DATE:** April 6, 1987.

**FOR FURTHER INFORMATION CONTACT:** Marjorie J. Shandruk, Office of Management and Operations (HFA–340), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4976.

**SUPPLEMENTARY INFORMATION:** FDA is amending the regulations in 21 CFR Part 5 by adding § 5.93 to clarify that the Director and Deputy Director, Center for Drugs and Biologics (CDB), and the Director and Deputy Director, Office of Drug Standards, CDB, are delegated the authority to perform all of the functions of the Commissioner of Food and Drugs with regard to the submission of and effective approval dates for abbreviated new drug applications and certain new drug applications under section 505 (c) and (j) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355 (c) and (j)).

Further redelegation of the authority delegated is not authorized. Authority delegated to a position by title may be exercised by a person officially designated to serve in such position in an acting capacity or on a temporary basis.

**List of Subjects in 21 CFR Part 5**

Authority delegations (Government agencies), Organization and functions (Government agencies).

Therefore, under the Federal Food, Drug, and Cosmetic Act and under the authority delegated to the Commissioner of Food and Drugs, Part 5 is amended as follows:

## PART 5—DELEGATIONS OF AUTHORITY AND ORGANIZATION

1. The authority citation for 21 CFR Part 5 continues to read as follows:

**Authority:** 5 U.S.C. 504, 552; 7 U.S.C. 2217; 15 U.S.C. 638, 1451 *et seq.*; 21 U.S.C. 41 *et seq.*, 61–63, 141 *et seq.*, 301–392, 467f(b), 679(b), 801 *et seq.*, 823(f), 1031 *et seq.*; 35 U.S.C. 156; 42 U.S.C. 219, 241, 242(a), 242a, 242l, 242o, 243, 262, 263, 263b through 263m, 264, 265, 300u *et seq.*, 1395y and 1395y note, 3246b(b)(3), 4831(a), 10007, and 10008; Federal Caustic Poison Act (44 Stat. 1406); Federal Advisory Committee Act (Pub. L. 92–463); E.O. 11490, 11921.

2. Subpart B is amended by adding § 5.93 to read as follows:

**§ 5.93 Submission of and effective approval dates for abbreviated new drug applications and certain new drug applications.**

The following officials are authorized to perform all of the functions of the Commissioner of Food and Drugs with regard to decisions made under section 505(c)(3)(D) and (j)(4)(D) of the Federal Food, Drug, and Cosmetic Act (the act) concerning the date of submission or the date of effective approval of abbreviated new drug applications including supplements thereto submitted under section 505(j) of the act and of new drug applications including supplements thereto submitted under 505(b)(1) of the act and described under section 505(b)(2) of the act:

(a) The Director and Deputy Director, Center for Drugs and Biologics (CDB).

(b) The Director and Deputy Director, Office of Drug Standards, CDB.

Dated: March 27, 1987.

**John M. Taylor,**

*Associate Commissioner for Regulatory Affairs.*

[FR Doc. 87–7508 Filed 4–3–87; 8:45 am]

**BILLING CODE 4160–01–M**

**21 CFR Part 81**

**[Docket No. 76N-0366]**

## Provisional Listing of FD&C Yellow No. 6, D&C Red No. 8, and D&C Red No. 9; Postponement of Closing Date

**AGENCY:** Food and Drug Administration.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is postponing the closing date for the provisional listing of D&C Red No. 8 and D&C Red No. 9 for use as color additives in drugs and cosmetics, and for the provisional listing of FD&C Yellow No. 6 for use as a color additive in food, drugs, and cosmetics. The new closing date will be June 5, 1987. FDA has decided that this postponement is necessary to provide time for evaluation of objections submitted in response to the final rule, published in the **Federal Register** of December 5, 1986 (51 FR 43877), permanently listing the drug and cosmetic uses of D&C Red. No. 8 and D&C Red. No. 9, and the final rule published in the **Federal Register** of November 19, 1986 (51 FR 41765), permanently listing the food, drug, and cosmetic uses of FD&C Yellow No. 6.

**EFFECTIVE DATE:** April 6, 1987, the new closing date for FD&C Yellow No. 6, D&C Red No. 8, and D&C Red No. 9 will be June 5, 1987.

**FOR FURTHER INFORMATION CONTACT:** Gerald L. McCowin, Center for Food Safety and Applied Nutrition (HFF-330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5676.

**SUPPLEMENTARY INFORMATION:** FDA established the current closing date of April 6, 1987, for the provisional listing of FD&C Yellow No. 6, D&C Red No. 8, and D&C Red No. 9 by regulation published in the **Federal Register** of February 3, 1987 (52 FR 3224). In the **Federal Register** of December 5, 1986 (51 FR 43877), FDA permanently listed the drug and cosmetic uses of D&C Red No. 8 and D&C Red No. 9. A final rule permanently listing the food, drug, and cosmetic uses of FD&C Yellow No. 6 was published in the **Federal Register** of November 19, 1986 (51 FR 41765). FDA has received numerous comments objecting to the permanent listing of D&C Red No. 8, D&C Red No. 9, and FD&C Yellow No. 6.

FDA believes that it is reasonable to postpone the closing date for these color additives until June 5, 1987, to provide time for evaluation of these comments. FDA concludes that this extension is consistent with the public health and the standards set forth for continuation of provisional listing in *McIlwain* v. *Hayes*, 690 F.2d 1041 (D.C. Cir. 1982).

Because of the shortness of time until the April 6, 1987, closing date, FDA concludes that notice and public procedure on this regulation are impracticable and that good cause exists for issuing the postponement as a final rule and for an effective date of April 6, 1987. This regulation will permit the uninterrupted use of these color additives until further action is taken. In accordance with 5 U.S.C. 553(b) and (d) (1) and (3), this postponement is issued as a final regulation, effective on April 6, 1987.

### List of Subjects in 21 CFR Part 81

Color additives, Cosmetics, Drugs.

Therefore, under the Transitional Provisions of the Color Additive Amendments of 1960 to the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Part 81 is amended as follows:

## PART 81—GENERAL SPECIFICATIONS AND GENERAL RESTRICTIONS FOR PROVISIONAL COLOR ADDITIVES FOR USE IN FOODS, DRUGS, AND COSMETICS

1. The authority citation for 21 CFR Part 81 continues to read as follows:

**Authority:** Secs. 701, 706, 52 Stat. 1055-1056 as amended, 74 Stat. 399-407 as amended (21 U.S.C. 371, 376); Title II, Pub. L. 86-618; sec. 203, 74 Stat. 404-407 (21 U.S.C. 376, note); 21 CFR 5.10.

### § 81.1 [Amended]

2. In § 81.1 *Provisional lists of color additives* by revising the closing dates for "FD&C Yellow No. 6" in paragraph (a) and for "D&C Red No. 8" and "D&C Red No. 9" in paragraph (b) to read "June 5, 1987."

### § 81.27 [Amended]

3. In § 81.27 *Conditions of provisional listing* by revising the closing dates for "FD&C Yellow No. 6," "D&C Red No. 8," and "D&C Red No. 9" in paragraph (d) to read "June 5, 1987."

Dated: March 20, 1987.

**John M. Taylor,**

*Associate Commissioner for Regulatory Affairs.*

[FR Doc. 87-7504 Filed 4-3-87; 8:45 am]

BILLING CODE 4160-01-M

**21 CFR Part 172**

**[Docket No. 86F-0221]**

## Food Additives Permitted for Direct Addition to Food for Human Consumption; Sucrose Fatty Acid Esters

**AGENCY:** Food and Drug Administration.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the food additive regulation for sucrose fatty acid esters to provide for the safe use of vegetable oils in their manufacture. This action responds to a petition filed by the Nebraska Department of Economic Development.

**DATES:** Effective April 6, 1987; objections by May 6, 1987.

**ADDRESS:** Written objections to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** John W. Gordon, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C Street, SW., Washington, DC 20204, 202-426-5487.

**SUPPLEMENTARY INFORMATION:** In a notice published in the **Federal Register** of July 22, 1986 (51 FR 26308), FDA announced that a petition (FAP 5A3859) had been filed by the Nebraska Department of Economic Development, c/o Commonwealth Bldg., 1625 K Street NW., Washington, DC 20006, proposing that 21 CFR 172.859(a) be amended to provide for the safe use of vegetable oils in the manufacture of sucrose fatty acid esters.

FDA has evaluated the data in the petition and other relevant material. The agency concludes that the proposed food additive use is safe, and that the regulation should be amended as set forth below.

In the **Federal Register** of November 5 1986 (51 FR 40160), FDA published an amendment of § 172.859 that would permit the use of additional solvents in the manufacture of sucrose fatty acid esters. The agency received an objection to this amendment and is currently evaluating this objection. However, the current action to expand the source of fatty acids that may be used in the manufacture of sucrose fatty esters is not related to the prior amendment or to the objection to that amendment. Therefore, the agency is proceeding with the current amendment to this regulation. The agency notes that this action has no bearing on its evaluation

of the objection to the November 5, 1986, amendment.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition (address above) by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has determined under 21 CFR 25.24(a)(9) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required

Any person who will be adversely affected by this regulation may at any time on or before May 6, 1987 file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularly the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

**List of Subjects in 21 CFR Part 172**

Food additives.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director of the Center for Food Safety and Applied Nutrition, Part 172 is amended as follows:

## PART 172—FOOD ADDITIVES PERMITTED FOR DIRECT ADDITION TO FOOD FOR HUMAN CONSUMPTION

1. The authority citation for 21 CFR Part 172 continues to read as follows:

**Authority:** Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

2. In § 172.859 by revising the first sentence in paragraph (a) to read as follows:

**§ 172.859 Sucrose fatty acid esters.**

* * * * *

(a) Sucrose fatty acid esters are the mono-, di-, and tri-esters of sucrose with fatty acids and are derived from sucrose and edible tallow or hydrogenated edible tallow or edible vegetable oils.

* * *

Dated: March 24, 1987.

**Sanford A. Miller,**

*Director, Center for Food Safety and Applied Nutrition.*

[FR Doc. 87–7506 Filed 4–3–87; 8:45 am]

BILLING CODE 4160-01-M

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## 21 CFR Part 175

**[Docket No. 85F–0302]**

## Indirect Food Additives; Adhesives and Components of Coatings

**AGENCY:** Food and Drug Administration.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of poly(ethyloxazoline) as a component of adhesives. This action responds to a food additive petition filed by The Dow Chemical Co.

**DATES:** Effective April 6, 1987; objections by May 6, 1987.

**ADDRESS:** Written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Marvin D. Mack, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202–472–5690.

**SUPPLEMENTARY INFORMATION:** In a notice published in the Federal Register of July 11, 1985 (50 FR 28264), FDA announced that a food additive petition (FAP 5B3869) had been filed by The Dow Chemical Co., Midland, MI 48674, proposing that § 175.105 *Adhesives* (21 CFR 175.105) be amended to provide for the safe use of polyethyloxazoline as a component of adhesives.

FDA has evaluated the data in the petition and other relevant material. The agency concludes that the proposed use of the additive as a component of adhesives is safe, and that the regulations should be amended as set forth below. The agency also concludes that the additive is more accurately identified as "poly(ethyloxazoline)." The agency is therefore adopting this modified nomenclature in this final rule.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition (address above) by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. This action was considered under FDA's final rule implementing the National Environmental Policy Act (21 CFR Part 25).

Any person who will be adversely affected by this regulation may at any time on or before May 6, 1987, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such

a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

**List of Subjects in 21 CFR Part 175**

Adhesives, Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Food Safety and Applied Nutrition, Part 175 is amended as follows:

## PART 175—INDIRECT FOOD ADDITIVES: ADHESIVES AND COMPONENTS OF COATINGS

1. The authority citation for 21 CFR Part 175 continues to read as follows:

**Authority:** Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

2. Section 175.105(c)(5) is amended by alphabetically inserting a new item in the list of substances to read as follows:

**§ 175.105 Adhesives.**

* * * * *

(c) * * *

(5) * * *

| Substances | Limitations |
|---|---|
| * * * * * | |
| Poly(ethyloxazoline) (CAS Reg. No. 25805-17-8) | |
| * * * * * | |

Dated: March 6, 1987.

**Richard J. Ronk,**

*Acting Director, Center for Food Safety and Applied Nutrition.*

[FR Doc. 87-7509 Filed 4-3-87; 8:45 am]

BILLING CODE 4160-01-M

## 21 CFR Part 184

**[Docket No. 79N-0371/CP]**

## Potassium and Sodium Lactate; Affirmation of GRAS Status

**AGENCY:** Food and Drug Administration.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is affirming that potassium lactate and sodium lactate are generally recognized as safe (GRAS) for use as direct human food ingredients. This action responds to a petition filed by Purac, Inc.

**EFFECTIVE DATE:** April 6, 1987.

**FOR FURTHER INFORMATION CONTACT:** Robert L. Martin, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-426-9463.

**SUPPLEMENTARY INFORMATION:**

### I. Introduction

Under the procedures described in 21 CFR 170.35, Purac, Inc., Arlington Heights, IL 60004, submitted a petition (GRASP 4G0292) requesting that 21 CFR Part 184 be amended to provide for the safe use of sodium lactate and potassium lactate as flavor enhancers, flavoring agents or adjuvants, humectants, and pH control agents in foods.

FDA published a notice of filing of this petition in the **Federal Register** of February 14, 1985 (50 FR 6252), and gave interested persons an opportunity to submit comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Room 4-62, 5600 Fishers Lane, Rockville, MD 20857. No comments were received in response to the agency's notice of filing.

The petition contained data and information on food-grade specifications for sodium lactate and potassium lactate and information on the current and expected uses of these ingredients in a number of food categories. The petition also referenced published articles on animal feeding studies conducted with sodium lactate. The petition, however, did not contain safety studies on the food use of potassium lactate. Nonetheless, the agency found that it could adequately evaluate the safety of the food uses of these ingredients using data already available in its files.

The data on which FDA based its evaluation of the safety of the use of both potassium lactate and sodium lactate consisted of information compiled during the comprehensive safety review of the use of lactic acid and certain lactates as direct human food ingredients. The agency referenced these data in a proposed rule in the **Federal Register** of February 25, 1983 (48 FR 8086), and subsequently affirmed the GRAS status of calcium lactate and lactic acid in a final rule published in the **Federal Register** of September 7, 1984 (49 FR 35366).

### II. Background

The agency completed its comprehensive safety review of the GRAS status of lactic acid and calcium lactate in 1984. During the comment period on the agency's proposal to affirm the use of lactic acid and calcium lactate as GRAS, FDA received a petition that requested that the agency also affirm the use of sodium lactate and potassium lactate as GRAS. The agency notified the petitioner by letter on July 24, 1984, that it would not address the petitioned uses of sodium lactate and potassium lactate in the final rule on lactic acid and calcium lactate because the agency needed more time to evaluate the requested uses of sodium lactate and potassium lactate. The agency also requested clarification of some data presented in the petition on the identity, specifications, safety, and methods of detection of sodium lactate and potassium lactate. The agency informed the petitioner that the data requested were essential to assess the safety of the use of these substances. FDA advised the petitioner that the agency would consider whether the requested uses of these lactates were GRAS when it was presented with the data necessary to make such an assessment.

Consequently, the petitioner submitted an amendment responding to FDA's concerns about the petition. This amendment contained the supplemental data and information requested by the agency.

### III. Sodium Lactate and Potassium Lactate

Sodium lactate and potassium lactate are the sodium and potassium salts of lactic acid. They are prepared by neutralization of lactic acid with sodium and potassium bases. The bases used for the commercial preparation of these substances are food-grade sodium hydroxide and potassium hydroxide. Sodium and potassium lactate also occur naturally in the metabolic functions of mammalian species.

### IV. Use and Exposure Estimates

In 1970, the National Academy of Sciences/National Research Council (NAS/NRC) surveyed a representative cross-section of food manufacturers to determine the specific foods in which various food ingredients, including sodium lactate and potassium lactate, were used and the levels of use. The survey revealed that sodium lactate has had only limited use as a food ingredient. No information was received from the survey on food uses of potassium lactate.

In 1982, NAS/NRC conducted a poundage update survey that found that 13 pounds of sodium lactate were used in food in 1981, and that the principal food use of this ingredient was as a

flavoring agent. No data on potassium lactate were received in the NAS/NRC 1982 poundage update.

Sodium lactate is listed in 9 CFR 318.7(c)(4) and 9 CFR 319.700 for use in margarine or oleomargarine as an acidulant. Additionally, it is listed as an optional ingredient in the preparation of mono- and diglycerides for use as emulsifiers in margarine under 21 CFR 166.110(b)(4). Sodium lactate is used in medicine as an electrolyte in injection solutions used for fluid or electrolyte replenishment and as an alkalizer for treating acidosis.

Published scientific literature included in the petition reported use of sodium lactate in other countries as a humectant to lower water activity in meat products; as a curing agent in hams: as a pH control agent in sauces, pickles, and dressings; and as a flavoring agent in imitation meat flavors (used in soups, gravies, and sauces). The Food and Agricultural Organization (FAO) Food and Nutrition Paper No. 30, which was published in 1984, listed sodium lactate as a bodying agent and antioxidant synergist for use in jams, jellies, and citrus marmalades; in edible ices and ice mixes; and in edible caseinates.

Potassium lactate is listed in 9 CFR 318.7(c)(4) and 9 CFR 319.700 for use in margarine and oleomargarine as an acidulant. The petitioned uses of potassium lactate are as a flavoring agent or adjuvant, humectant, and a pH control agent. The petitioner indicated that an anticipated major use of potassium lactate would be as a salt (sodium chloride) substitute.

The agency evaluated the safety of these ingredients at levels of use anticipated for the intended technical effects. FDA determined the estimated daily intake of sodium lactate using 1983 food consumption survey data. It calculated that the 90th percentile (data obtained from MRCA Market Census VI, 1977 and USDA 1977–1978) estimated daily intake of sodium lactate would be 1.84 grams per day.

FDA also determined the estimated daily intake of potassium lactate. The agency's first estimate was based on the assumption that potassium lactate would totally replace sodium chloride. This consumption estimate was 10 to 24 grams per day for potassium lactate. The agency recognized, however, that this number is unrealistically high because, in many instances, it is not practical to substitute potassium lactate for sodium chloride. FDA determined that a more realistic estimate for potassium lactate consumption is about 7.5 percent of the total sodium chloride consumption of 12 grams per day. On this basis, the agency calculated an estimated daily intake for potassium lactate of 0.9 gram per day. Thus, the agency considers the 0.9 gram per day estimated daily consumption to be an accurate estimate upon which to base its safety evaluation. The agency believes that the other uses of potassium lactate are small compared to its use as a salt substitute.

The agency is confident that the estimated daily intakes that it has calculated do not understate potential exposure to sodium lactate and potassium lactate.

## V. Safety and Technical Effects

As general evidence of safety for potassium lactate and sodium lactate, the petitioner presented copies of the report of the Select Committee on GRAS Substances on lactic acid and calcium lactate. This report contained safety data on sodium lactate. The agency evaluated the data in the report in assessing the safety of the requested uses of sodium lactate. The petitioner also submitted copies of the Select Committee reports on sodium hydroxide and potassium hydroxide. In addition, the petitioner and FDA both conducted scientific literature searches on potassium lactate and sodium lactate.

FDA has evaluated all the available information on potassium lactate and sodium lactate. Based on its review of this information (References 1 through 3), FDA finds that it can affirm that the use of these ingredients is GRAS for the following reasons:

1. There is no evidence to demonstrate that potassium lactate or sodium lactate represents a hazard to individuals when used in food in accordance with current good manufacturing practice for the purposes stated in this final rule.

2. Potassium lactate and sodium lactate are products of mammalian metabolic functions.

3. The chemistry involved in the preparation of these products is well understood. The reaction of lactic acid with sodium hydroxide or potassium hydroxide yields sodium lactate or potassium lactate plus water. No harmful products have been shown to result from this neutralized reaction.

4. Potassium lactate and sodium lactate are approved in this country for use in margarine or oleomargarine as acidulants.

When a petition is submitted seeking affirmation of GRAS status based upon scientific procedures, published studies are usually required (21 CFR 170.30(b)). The agency recognizes that, in this matter, no published studies on potassium lactate were submitted. However, FDA finds that the factors listed above, together with the other information available on sodium lactate and on potassium lactate, as well as data available on the similar compounds lactic acid and calcium lactate, provide an appropriate basis on which to affirm the use of sodium lactate and potassium lactate as GRAS.

Additionally, the agency concludes from its assessment of data in the petition and the Select Committee's reports on lactic acid and lactates that the potassium and sodium salts of lactic acid will perform the technical effects of flavor enhancer, flavoring agent or adjuvant, humectant, and pH control agent as intended.

## VI. Conclusion

Therefore, FDA is affirming the GRAS status of potassium lactate and sodium lactate when they are used in accordance with current good manufacturing practice under § 184.1(b)(1). To make clear, however, that the affirmation of the GRAS status of these ingredients is based on the evaluation of limited uses, the regulations set forth the technical effects of these ingredients that FDA evaluated. The use of potassium lactate and sodium lactate as an acidulant in margarine and oleomargarine is covered under the listing of pH control agent.

The agency concludes, further, that an appropriate basis on which to affirm as GRAS the general use of sodium lactate and potassium lactate in infant formula and infant foods does not exist. Although the petitioner did not request use of these lactates in infant formulas and infant foods, such use had to be considered when total dietary substitution is possible. Neither the petition nor the Select Committee's report on the comprehensive safety review of lactic acid and lactates contained information or safety data on the general use of lactates in infant formulas and foods. The agency thus concludes that exclusion for use of these ingredients in infant formulas is justified based on the absence of safety data to support such use.

Because no food-grade specifications have been accepted by FDA for potassium lactate or sodium lactate at the present time, the agency will work with the Committee on Food Chemicals Codex of the National Academy of Sciences to develop acceptable specifications for these ingredients. If acceptable specifications are developed, the agency will incorporate them into these regulations at a later date. Until specifications are developed, FDA has determined that the public health will be adequately protected if these ingredients comply with the description in the

regulations and are of food-grade purity (21 CFR 170.30(h)(1) and 182.1(b)(3)).

The agency has determined under 21 CFR 25.24(b)(7) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

In accordance with the Regulatory Flexibility Act, the agency considered the potential effects that this rule would have on small entities, including small businesses. In accordance with section 605(b) of the Regulatory Flexibility Act, the agency has determined that no significant impact on a substantial number of small entities would derive from this action.

In accordance with Executive Order 12291, FDA has examined the economic effects of this final rule and has determined that the rule is not a major rule as defined by that Order.

The agency's findings of no major economic impact and no significant impact on a substantial number of small entities, and the evidence supporting these findings, are contained in a threshold assessment which is on file with the Dockets Management Branch (address above).

### References

The following references have been placed on display in the Dockets Management Branch and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Memorandum dated February 14, 1985, from John E. Vanderveen, Director, Division of Nutrition, to Robert L. Martin, Division of Food and Color Additives.

2. Memorandum dated February 27, 1985, from Carl B. Johnson, Division of Toxicology, to Robert L. Martin, Division of Food and Color Additives.

3. Memorandum dated December 24, 1986, from Carl B. Johnson, Division of Toxicology, to Robert L. Martin, Division of Food and Color Additives.

### List of Subjects in 21 CFR Part 184

Food ingredients.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, Part 184 is amended as follows:

## PART 184—DIRECT FOOD SUBSTANCES AFFIRMED AS GENERALLY RECOGNIZED AS SAFE

1. The authority citation for 21 CFR Part 184 continues to read as follows:

**Authority:** Secs. 201(s), 402, 409, 701, 52 Stat. 1046–1047 as amended, 1055–1056 as amended, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 342, 348, 371); 21 CFR 5.10 and 5.61.

2. By adding new § 184.1639 to read as follows:

**§ 184.1639 Potassium lactate.**

(a) Potassium lactate ($C_3H_5O_3K$, CAS Reg. No. 996–31–6) is the potassium salt of lactic acid. It is a hydroscopic, white, odorless solid and is prepared commercially by the neutralization of lactic acid with potassium hydroxide.

(b) FDA is developing food-grade specifications for potassium lactate in cooperation with the National Academy of Sciences. In the interim, this ingredient must be of a purity suitable for its intended use.

(c) In accordance with § 184.1(b)(1), the ingredient is used in food with no limitation other than current good manufacturing practice. This regulation does not authorize its use in infant foods and infant formulas. The affirmation of this ingredient as generally recognized as safe (GRAS) as a direct human food ingredient is based upon the following current good manufacturing practice conditions of use:

(1) The ingredient is used as a flavor enhancer as defined in § 170.3(o)(11) of this chapter; a flavoring agent or adjuvant as defined in § 170.3(o)(12) of this chapter; a humectant as defined in § 170.3(o)(16) of this chapter; and a pH control agent as defined in § 170.3(o)(23) of this chapter.

(2) The ingredient is used in food at levels not to exceed current good manufacturing practice.

(d) Prior sanctions for this ingredient different from the uses established in this section do not exist or have been waived.

3. By adding new § 184.1768 to read as follows:

**§ 184.1768 Sodium lactate.**

(a) Sodium lactate ($C_3H_5O_3N_a$, CAS Reg. No. 72–17–3) is the sodium salt of lactic acid. It is prepared commercially by the neutralization of lactic acid with sodium hydroxide.

(b) FDA is developing food-grade specifications for sodium lactate in cooperation with the National Academy of Sciences. In the interim, this ingredient must be of a purity suitable for its intended use.

(c) In accordance with § 184.1(b)(1), the ingredient is used in food with no limitation other than current good manufacturing practice. This regulation does not authorize its use in infant foods and infant formulas. The affirmation of this ingredient as generally recognized as safe (GRAS) as a direct human food ingredient is based upon the following current good manufacturing practice conditions of use:

(1) The ingredient is used as an emulsifier as defined in § 170.3(o)(8) of this chapter; a flavor enhancer as defined in § 170.3(o)(11) of this chapter; a flavoring agent or adjuvant as defined in § 170.3(o)(12) of this chapter; a humectant as defined in § 170.3(o)(16) of this chapter; and a pH control agent as defined in § 170.3(o)(23) of this chapter.

(2) The ingredient is used in food at levels not to exceed current good manufacturing practice.

(d) Prior sanctions for this ingredient different from the uses established in this section do not exist or have been waived.

Dated: March 24, 1987.

**Sanford A. Miller,**

*Director, Center for Food Safety and Applied Nutrition.*

[FR Doc. 87–7507 Filed 4–3–87; 8:45 am]

BILLING CODE 4160–01–M

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### 21 CFR Part 524

## Ophthalmic and Topical Dosage Form New Animal Drugs Not Subject to Certification; Levamisole

**AGENCY:** Food and Drug Administration.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Pitman-Moore, Inc., providing for use of levamisole as a pour-on liquid for treating cattle for stomach, intestinal, and lung worm infections.

**EFFECTIVE DATE:** April 6, 1987.

**FOR FURTHER INFORMATION CONTACT:** Adriano R. Gabuten, Center for Veterinary Medicine (HFV–135), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4913.

**SUPPLEMENTARY INFORMATION:** Pitman-Moore, Inc., Washington Crossing, NJ 08560, filed NADA 139–877 which provides for safe and effective use of a 200-milligram-per-milliliter levamisole pour-on liquid (TOTALON™) for treatment of cattle for stomach worm, intestinal worm, and lung worm infections. Levamisole is currently approved as a bolus, drench, gel, and injectable to treat cattle for stomach worm, intestinal worm, and lung worm infections. Based on the data in the NADA and additional information, the

NADA is approved and new 21 CFR 524.1240 is added to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. This action was considered under FDA's final rule implementing the National Environmental Policy Act (21 CFR Part 25).

**List of Subjects in 21 CFR Part 524**

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 524 is amended as follows:

## PART 524—OPHTHALMIC AND TOPICAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR Part 524 continues to read as follows:

**Authority:** Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)); 21 CFR 5.10 and 5.83.

2. Part 524 is amended by adding new § 524.1240 to read as follows:

**§ 524.1240 Levamisole.**

(a) *Specifications.* The drug contains 200 milligrams of levamisole per milliliter of diethylene glycol monobutyl ether (DGME) solution.

(b) *Sponsor.* See 011716 in § 510.600(c) of this chapter.

(c) *Related tolerances.* See § 556.350 of this chapter.

(d) *Conditions of use. Cattle*—(1) *Amount.* 2.5 milliliters per 110 pounds (10 milligrams of levamisole per kilogram) of body weight as a single dose topically to the back of the animal.

(2) *Indications for use.* Anthelmintic effective against stomach worms (*Haemonchus, Trichostrongylus, Ostertagia*), intestinal worms (*Trichostrongylus, Cooperia, Nematodirus, Bunostomum, Oesophagostomum, Chabertia*), and lungworms (*Dictyocaulus*).

(3) *Limitations.* Conditions of constant helminth exposure may require retreatment within 2 to 4 weeks after the first treatment. Cattle must not be slaughtered within 9 days following last treatment. Do not administer to dairy animals of breeding age. Do not treat animals before dipping or prior to exposure to heavy rain. Consult your veterinarian for assistance in the diagnosis, treatment, and control of parasitism, and before using in severely debilitated animals.

Dated: March 17, 1987.

**Gerald B. Guest,**

*Director, Center for Veterinary Medicine.*

[FR Doc. 87–7510 Filed 4–3–87; 8:45 am]

BILLING CODE 4160–01–M

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**21 CFR Part 573**

**[Docket No. 86F–0060]**

## Food Additives Permitted in Feed and Drinking Water of Animals; Selenium

**AGENCY:** Food and Drug Administration.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the food additive regulations to provide for (1) an increase in the maximum supplementation level of selenium in complete feed for the major food-producing animals from 0.1 to 0.3 part per million; (2) a proportional increase in the limit feeding (feed supplements and salt-mineral mixtures) consumption rates for sheep and beef cattle to 0.7 milligram and 3 milligrams per head per day, respectively; (3) a proportional increase in the selenium fortification levels for salt-mineral mixtures for sheep and cattle to 90 and 120 parts per million, respectively; and (4) more flexibility in certain manufacturing controls. This action responds to a petition filed by the American Feed Industry Association, Inc.

**DATES:** Effective April 6, 1987; objections by May 6, 1987.

**ADDRESS:** Written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** William D. Price, Center for Veterinary Medicine (HFV–221), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4438.

**SUPPLEMENTARY INFORMATION:** In a notice published in the **Federal Register** on February 21, 1986 (51 FR 6321), FDA announced that FAP 2201 had been filed by the American Feed Industry Association, Inc., 1701 North Fort Myer Dr., Arlington, VA 22209. The petition proposes that 21 CFR 573.920 be amended (1) to increase the maximum use level of selenium in complete feed for chickens, swine, turkeys, sheep, cattle, and ducks to a level not to exceed 0.3 part per million; (2) to increase the animal unit consumption rate of feed supplements to a level not to exceed 0.7 milligram per head per day for sheep and not to exceed 3 milligrams per head per day for beef cattle; (3) to increase the selenium fortification levels and consumption rates for salt-mineral mixtures for beef cattle up to 120 parts per million in the mixture for feeding at a rate not to exceed 3 milligrams per head per day, and sheep up to 90 parts per million in the mixture for feeding at a rate not to exceed 0.7 milligram per head per day; (4) to make 1 pound the minimum amount of selenium premix (concentration of 90.8 milligrams of selenium per pound) that may be incorporated into each ton of complete feed or salt-mineral mixture for all approved animal species; and (5) to eliminate the requirement for premix manufacturers to analyze each production batch.

FDA has evaluated data and information submitted in the petition and other relevant material. The agency has concluded that Part 573 should be amended to provide for safe use of selenium as set forth below.

In accordance with § 571.1(h) (21 CFR 571.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Veterinary Medicine (address above) by appointment with the information contact person listed above. As provided in 21 CFR 571.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not a have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding may be seen in the Dockets Management Branch

(address above) between 9 a.m. and 4 p.m., Monday through Friday. Under FDA's regulations implementing the National Environmental Policy Act (21 CFR Part 25), an action of this type would require an environmental assessment under 21 CFR 25.31a(a).

Any person who will be adversely affected by this regulation may at any time on or before May 6, 1987, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9. a.m. and 4 p.m., Monday through Friday.

**List of Subjects in 21 CFR Part 573**

Animal Feeds, Food additives.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Part 573 is amended as follows:

## PART 573—FOOD ADDITIVES PERMITTED IN FEED AND DRINKING WATER OF ANIMALS

1. The authority citation for 21 CFR Part 573 is revised to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

2. By revising § 573.920 to read as follows:

**§ 573.920 Selenium.**

The food additive selenium may be safely used in accordance with the following prescribed conditions:

(a) The additive is used in animal feed as a nutrient in the form of sodium selenite or sodium selenate.

(b) It is added to feed as follows:

(1) In complete feed for chickens, swine, turkeys, sheep, cattle, and ducks at a level not to exceed 0.3 part per million.

(2) In feed supplements for limit feeding as follows:

(i) *Sheep:* At a level not to exceed an intake of 0.7 milligram per head per day.

(ii) *Beef cattle:* At a level not to exceed an intake of 3 milligrams per head per day.

(3) In salt-mineral mixtures for free-choice feeding as follows:

(i) *Sheep:* Up to 90 parts per million in a mixture for free-choice feeding at a rate not to exceed an intake of 0.7 milligram per head per day.

(ii) *Beef cattle:* Up to 120 parts per million in a mixture for free-choice feeding at a rate not to exceed an intake of 3 milligrams per head per day.

(c) The additive shall be incorporated into feed as follows:

(1) It shall be incorporated into each ton of complete feed by adding no less than 1 pound of a premix containing no more than 90.8 milligrams of added selenium per pound.

(2) It shall be incorporated into each ton of salt-mineral mixture for sheep or beef cattle from a premix containing no more than 4.5 grams of added selenium per pound.

(d) The premix manufacturer shall follow good manufacturing practices in the production of selenium premixes. Inventory, production, and distribution records must provide a complete and accurate history of product production. Production controls must assure products to be what they are purported and labeled. Production controls shall include analysis sufficient to adequately monitor quality.

(e) The label or labeling of any selenium premix shall bear adequate directions and cautions for use including this statement: "Caution: Follow label directions. The addition to feed of higher levels of this premix containing selenium is not permitted."

Dated: March 11, 1987.

**John M. Taylor,**

*Associate Commissioner for Regulatory Affairs.*

[FR Doc. 87–7505 Filed 4–3–87; 8:45 am]

BILLING CODE 4160-01-M

## VETERANS ADMINISTRATION

**38 CFR Part 1**

### Use of Offical Mail in the Location and Recovery of Missing Children

**AGENCY:** Veterans Administration.

**ACTION:** Final regulations.

**SUMMARY:** These new regulations authorize the Veterans Administration (VA) to use official mail to aid in the location and recovery of missing children and provide procedures under which VA official mail may be used to assist in the location and recovery of missing children.

**EFFECTIVE DATE:** These regulations are effective April 6, 1987.

**FOR FURTHER INFORMATION CONTACT:** Gordon Boone, Mail and Travel Policy Division (734), Office of Information Management and Statistics, Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233–2454/5436.

**SUPPLEMENTARY INFORMATION:** These regulations are issued in accordance with 39 U.S.C. 3220(a)(2) which requires Federal agencies to prescribe regulations under which official mail may be used to assist in the location and recovery of missing children. These regulations are published in conformance with the Office of Juvenile Justice and Delinquency Prevention (OJJDP) guidelines published in the November 8, 1985, **Federal Register** (50 FR 46622) and pursuant to Pub. L. 99–87, 99 Stat. 290, August 9, 1985.

Enactment of Pub. L. 99–87 reflects an increasing public concern with the problem of missing and exploited children. These regulations are intended to comply with the regulation requirement set forth in section 1(a) of Pub. L. 99–87, which adds a new Section 3220 to Title 39, United States Code. These regulations implement the OJJDP guidelines promulgated under authority of 39 U.S.C. 3220(a)(1), and are intended to assist in the location and recovery of missing children through the use of official mail.

The VA has determined that compliance with 5 U.S.C. 553(b) as to prior publication for notice and public comment is, pursuant to 5 U.S.C. 553(b)(B), impracticable and contrary to the public interest. There exists good cause for making these regulations effective without further delay. Any postponement in the implementation of the procedures described in these regulations would be contrary to the public's interest in the location and recovery of missing children.

**Executive Order 12291**

These regulations do not constitute a major rule as that term is defined in Executive Order 12291 because they will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in any costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

**Regulatory Flexibility Act**

The Administrator hereby certifies that these regulations will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601 through 612, because it only concerns agency procedures for dissemination of information pertaining to missing children which is obtained solely from the National Center for Missing and Exploited Children.

**Paperwork Reduction Act**

There are no collection of information requirements contained in these regulations. Therefore, approval of the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 through 3520, is not required.

**List of Subjects in 38 CFR Part 1**

Administrative practice and procedure, Child welfare, Missing and exploited children, Official mail.

Approved: February 3, 1987.

**Thomas K. Turnage,**

*Administrator.*

## PART 1—[AMENDED]

38 CFR Part 1, General Provisions, is amended by adding a new center heading and §§ 1.700 through 1.705 to read as follows:

**Use of Official Mail in the Location and Recovery of Missing Children**

Sec.



**Authority:** 39 U.S.C. 3220(a)(2), 5 U.S.C. 301.

**§ 1.700 Purpose.**

Sections 1.700 through 1.705 of this title, providing for a Missing Children Official Mail Program in the Veterans Administration, are intended to comply with the regulation requirement set forth in section 1(a) of Pub. L. 99–87, which adds a new section 3220 to Title 39, United States Code.

**§ 1.701 Contact person for missing children official mail program.**

The Veterans Administration contact person for the missing children official mail program is: Gordon Boone, Mail and Travel Policy Division (734), Office of Information Management and Statistics, Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420 Telephone number: (202) 233–2454/5436.

(39 U.S.C. 3220(a)(2), 5 U.S.C. 301)

**§ 1.702 Policy.**

(a) The Veterans Administration will supplement and expand the national effort to assist in the location and recovery of missing children by maximizing the economical use of missing children information in domestic official mail and publications directed to members of the public and Veterans Administration employees.

(b) If doing so would be cost effective, the Veterans Administration shall insert via automated insertion equipment pictures and biographical information related to missing children in a variety of types of official mail originating at the Veterans Administration data processing centers. In addition, pictures and biographical information may be printed in self-mailers and other Veterans Administration publications (newsletters, bulletins, etc.).

(c) The National Center for Missing and Exploited Children (National Center) will be the sole source from which the Veterans Administration will acquire the camera-ready and other photographic and biographical materials to be disseminated for use by Veterans Administration organizational units. The information will be ordered and disseminated by the Mail and Travel Policy Division.

(d) The Veterans Administration will remove all printed inserts and other materials from circulation or other use (i.e. use or destroy) within a three-month period from the date the National Center notifies the Veterans Administration that a child whose picture and biographical information have been made available to the Veterans Administration has been recovered or that permission of the parent(s) or guardian to use the child's photograph and biographical information has been withdrawn. The National Center will be responsible for immediately notifying the Veterans Administration contract person, in writing, of the need to withdraw from circulation official mail envelopes and other materials related to a particular child. Photographs which were reasonably current as to the time of the child's disappearence shall be the only acceptable form of visual medium or pictorial likeness used in official mail.

(e) The Veterans Administration will give priority to official mail that is addressed to:

(1) Members of the public that will be received in the United States, its territories and possessions; and

(2) Inter- and intra-agency publications and other media that will also be widely disseminated to Veterans Administration employees.

(f) The Veterans Administration will avoid repetitive mailings of material to the same individuals.

(g) All Veterans Administration employee suggestions and/or recommendations for additional cost-effective opportunities to use photographs and biographical data on missing children will be provided to the Veterans Administration contact person.

(h) These shall be the sole reguations for the Veterans Administration and its component organizational units.

(39 U.S.C. 3220(a)(2), 5 U.S.C. 301).

**§ 1.703 Cost and percentage estimates.**

It is estimated that this program will cost the Veterans Administration $40,000 per year at full implementation. This figure is based on projections of printing, inserting, and administrative costs. It is the Veterans Administration's objective that 20 percent of its first class official mail addressed to the public contain missing children photographs and information by the end of the first full year of the program.

(39 U.S.C. 3220(a)(2), 5 U.S.C. 301)

**§ 1.704 Report to the Office of Juvenile Justice and Delinquency Prevention (OJJDP).**

The Veterans Administration will compile and submit to the Office of

Juvenile Justice and Delinquency Prevention (OJJDP) by June 30, 1987, a consolidated report on its experience in implementation of 39 U.S.C. 3220(a)(2), the OJJDP guidelines, and the Veterans Administration regulation. The report will consolidate information gathered from individual Veterans Administration organizational units, cover the period through March 31, 1987, and provide detail on:

(a) Veterans Administration experience in implementation, including problems encountered, successful and/or innovative methods, adopted to use missing children photographs and information on or in official mail, the estimated number of pieces of official mail containing such information, and estimates of the percentage of total agency official mail, domestic mail, and domestic official mail directed to members of the public which this number represents.

(b) The estimated total cost to implement the program, with supporting detail.

(c) Recommendations for changes in the program which would make it more effective.

(39 U.S.C. 3220(a)(2), 5 U.S.C. 301)

**§ 1.705 Restrictions on use of missing children information.**

Missing children pictures and biographical data shall not be:

(a) Printed on official envelopes and other materials which are ordered and/or stocked in quantities which represent more than a 90-day supply.

(b) Printed on blank pages or covers of publications that may be included in the Superintendent of Documents Sales Program or be distributed to depository libraries.

(c) Inserted in any envelope and/or publication the contents of which may be construed to be inappropriate for association with the missing children program.

(d) Inserted in any envelope where the insertion would increase the postage cost for the item being mailed.

(e) Placed on letter-size envelopes on the official indicia, the area designated for optical character readers (OCRs), bar code read area, and return, address areas in accordance with the OJJDP guidelines and U.S. Postal Service standards.

(39 U.S.C. 3220(a)(2), 5 U.S.C. 301)

[FR Doc. 87-7458 Filed 4-3-87; 8:45 am]

BILLING CODE 8320-01-M

## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## 50 CFR Part 17

## Endangered and Threatened Wildlife and Plants; Reclassification of the Tinian Monarch From Endangered to Threatened Status

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** The Tinian monarch (*Monarcha takatsukasae*) is a small bird endemic to the island of Tinian in the Mariana Archipelago. Because its numbers in 1945 were thought to be critically low due to the removal of native forests for sugarcane production and to the destruction of forest by the activities of World War II, the monarch was listed as endangered in 1970, through there had been no surveys of the bird's status in the preceding two decades. The Service proposed that this small bird be removed from the protection of the Endangered Species Act (Act) on November 1, 1985, on the basis of recovery of the species. Based on comments received the Service is now reclassifying the Tinian monarch to threatened status and continues the protection of this species under the Act.

**DATE:** The effective date of this rule is May 6, 1987.

**ADDRESSES:** The complete file for this rule is available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Lloyd 500 Building, 500 NE., Multnomah Street, Suite 1692, Portland, Oregon 97232.

**FOR FURTHER INFORMATION CONTACT:** Mr. Wayne S. White, Chief, Division of Endangered Species, at the above address (503/231-6131 or FTS 429-6131).

**SUPPLEMENTARY INFORMATION:**

### Background

The Tinian monarch was first recognized as a species in 1931, when it was described by Y. Yamashina (Takatsukasa and Yamashina 1931). It is a small (15 centimeters; 6 inches) songbird with light rufous underparts, olive-brown upperparts, dark brown wings and tail, and white rump and undertail coverts (Baker 1951). The monarch is endemic to the island of Tinian, where it inhabits a variety of forest types from introduced second growth to well-developed native forests. Its numbers had apparently been reduced by 1945 due to the clearing of forests by the Japanese for sugarcane production and the destruction of remaining forest by military action during World War II (Coultas 1931, Owen 1974).

Since 1945, most of Tinian has been revegetated by a shrubby legume (*Leucaena leucocephala*). The monarch has adapted well to this introduced, woody shrub, and is now found abundantly throughout Tinian. Biologists who have visited Tinian over the last 10 years have commented on the general abundance of the monarch (Owen 1974, Pratt *et al.* 1979), and forest bird surveys conducted by the Service in 1982 found the monarch to be the second most abundant bird on the island with a population estimate of 40,000 (Engbring *et al.* 1986). The correct number is 40,000 not 10,000 as misstated in the proposal. It is likely that the species had recovered to near itrs pre-disturbance levels by the time the Service listed it in 1970. The listing was based upon the report of Gleize (1945).

The Tinian monarch was classified as endangered June 2, 1970 (35 FR 8495). No critical habitat has been designated. Because the population of the Tinian monarch appeared health, showed no signs of reproductive irregularities or stress, and was widely distributed over Tinian Island; the Service proposed to delist species on November 1, 1985 (50 FR 45632). However, recent changes in the factors affecting the species have caused the Service to reevaluate the proposed rule. The Service now believes that removal of the Tinian monarch from the List of Engangered and Threatened Wildlife would not be prudent at this time. The reasons for this decision are discussed in the "Summary of Comments and Recommendations" and the "Summary of Factors Affecting the Species" section that follows.

The Service determines that the Tinian monarch is a threatened species and remains protected under the provisions of the Endangered Species Act of 1973, as amended, (16 U.S.C. 1531 *et seq.*) until the new threats to its continued existence can be more thoroughly evaluated and ameliorated. This change in status acknowledges the increase in suitable habitat for the bird and its increase in population size since the close of the Second World War, but also recognizes the new threat of *Leucaena* defoliation by an introduced insect and the possibility of introduction of the predatory brown tree snake (*Boiga irregularis*).

### Summary of Comments and Recommendations

In the November 1, 1985, proposed rule and associated notifications, all interested parties were requested to

submit factual reports or information that might contribute to the development of a final rule. Appropriate Commonwealth agencies, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. A newspaper notice was published in the *Pacific Daily News* on November 23, 1985, which invited general public comment. Four letters of comment were received, including those from the Chief, Division of Fish and Wildlife, Commonwealth of the Northern Mariana Islands; Director, Guam Department of Agriculture; one Federal agency; and one individual. All comments received have been considered in formulating this final rule.

All letters of comment received recommended that the Tinian monarch not be removed from the List of Endangered and Threatened Wildlife, but instead be reclassified to threatened status. The reasons for this recommendation were as follows:

(1) The recent, accidental introduction of a psyllid insect that is causing the defoliation of the *Leucaena* shrub on the island. This shrub, which covers more than 70% of the land area of Tinian, is the only habitat for the monarch. The long term effect of the insect is presently unknown.

(2) The monarch is found only on Tinian, an island of about 39 square miles in area. There are no other natural or captive populations that could act as a reserve should there be a rapid and sustained decline in the population on this small island.

(3) As boat and plane traffic between Tinian and Guam increases (as a result of increased military and civilian development), the accidental, passive introduction of the brown tree snake from Guam becomes a greater threat. This snake appears to have caused the extirpation or near eradication of many native birds on Guam.

**Summary of Factors Affecting the Species**

After a thorough review and consideration of all information available, the Service agrees with the recommendations of the commentors and has determined that the Tinian monarch should be reclassified as a threatened species, rather than delisted as originally proposed. Procedures found at section 4(a)(1) of the Act and regulations (50 CFR Part 424) promulgated to implement those provisions were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the Tinian monarch (*Monarcha takatsukasae*) are as follows:

*A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range*

Since the publication of the proposed rule, and exotic psyllid insect (*Heteropsylla* sp.) has reached several of the Mariana Islands, including Tinian. Essentially all of the *Leucaena* scrub habitat on Tinian is infested with the insect, which is causing the near-total defoliation of the plant. This habitat makes up more than 70% of the land area of Tinian and is the only habitat for the monarch. The long term effect of the insect at present is unknown. Should the *Leucaena* not recover, then aggressive weeds, such as *Chromolaena odorata* and *Operculina ventricosa*, will move into the area, precluding regeneration of the *Leucaena* or native forest. The monarch is a forest dweller, and, if the *Leucaena* is replaced by vegetation such as these weeds, its population may be greatly reduced.

*B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes*

The Monarch is a small song bird and is not threatened by or sought for commercial, recreational, scientific, or educational purposes.

*C. Disease or Predation*

There are no known disease or predation problems on Tinian. There is concern, as there is for all islands in Micronesia, that disease or predators might someday be introduced and pose a threat. On Guam in the southern Mariana Islands, all native forest birds have been disappearing over the last 20 years. This decline appears to be due to an introduced predator, the brown tree snake, or other factors that are now being investigated. With the military becoming more active in training exercises on Tinian, the chance of an accidental introduction from Guam to Tinian of this secretive, nocturnal snake has increased. The principal potential source for introducing the snake on Tinian is the U.S. military. The Department of Defense is working with the Service towards the control of the snakes of Guam, particularly around transport centers (docks and airfields). The Service is actively investigating methods of controlling the snakes on Guam, in part, to reduce the threat of introduction to the other islands in this area of the Pacific. At present, however, nearly all bird species on Tinian appear to have healthy populations and are not known to be affected by serious disease or predation problems, although the potential threat remains.

*D. The Inadequacy of Existing Regulatory Mechanisms*

The monarch is presently protected by the Commonwealth of the Northern Marianas Fish and Game Law, as well as the U.S. Endangered Species Act. There are few, if any, enforcement problems, since the monarch is not harvested for commercial, recreational, or other purposes. Perhaps more important than regulations specifically protecting the monarch are laws that protect the overall integrity of the island ecosystem, such as quarantine laws. Quarantine regulations have been promulgated and are enforced by the Commonwealth government at airports and parts of entry. The U.S. military is self-regulatory, and enforces its own quarantine regulations.

*E. Other Natural or Manmade Factors Affecting its Continued Existence*

The small size of the island (39 square miles) and the limited distribution of the bird are potential threats to its continued existence. The monarch is endemic to the island of Tinian and, therefore, natural populations are found nowhere else on earth. Currently there are no captive or transplanted populations of the species nor are there any plans to establish any. In the event of a rapid and sustained decline of the Tinian population, there is no gene pool reserve.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to reclassify the Tinian monarch as a threatened species. This new classification reflects the recovery of the monarch from its formerly depleted numbers following World War II, and, at the same time, acknowledges the potential imminent threat posed by the psyllid insect and the brown tree snake. See the following "Critical Habitat" section for a discussion of why critical habitat is not being designated at this time.

**Critical Habitat**

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for this species at this time. Such a determination would result in no

known benefit to the species. About two-thirds of the island has been leased to the Navy, including the majority of the habitat occupied by the bird. The Navy has conducted its own survey of the natural resources on the land under its management and is aware of the presence and distribution of the monarch and of its responsibilities to listed species under the Act. Should any other potential adverse threat develop, the involved agencies could be informed by means other than a critical habitat determination.

### Available Conservation Measures

The Tinian monarch is already under the protection of the Act as an endangered species. Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, Commonwealth, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the Commonwealth, and requires that recovery actions be carried out for all listed species. These activities will continue with this species being reclassified to threatened. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is listed as endangered or threatened and with respect to its critical habitat, if any is designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402 (see 51 FR 19926; June 3, 1986). Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. As the Tinian monarch is presently listed as endangered, reclassification to threatened status would result in no modifications or changes of on-going or future management plans or actions by any Federal agency.

The Act and implementing regulations found at 50 CFR 17.21 and 17.31 set forth a series of general prohibitions and exceptions that apply to all threatened wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of a commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to posses, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and Commonwealth conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving threatened wildlife species under certain circumstances. Regulations governing such permits are at 50 CFR 17.32. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities, and for zoological exhibition, educational purposes, or special purposes consistent with the purposes of the Act. In some instances, permits may be issued during a specified period of time to relieve undue economic hardship that would be suffered if such relief were not available. Since the species is already protected by the Act and Commonwealth law, no take for commercial purposes has been allowed, and none would be expected for such a small bird. Therefore, no hardship permits can be issued.

### National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

### References Cited

Baker, R.H. 1951. The avifauna of Micronesia, its origin, evolution, and distribution. University of Kansas Publications, Museum of Natural History 3:1–359.

Coultas, W.F. 1931. Whitney South Sea Expedition journals. Unpublished field notes. American Museum of Natural History. Vol. W (journal and letters):132–137 and 256–260.

Engbring, J., F. Ramsey, and V. Wildman. 1986. Micronesian forest bird survey, 1982: Saipan, Tinian, Agiguan, and Rota. U.S. Fish and Wildlife Service report. 143 pp.

Gleize, D.A. 1945. Birds of Tinian. Bull. Massachusetts Audubon Soc. 29:200.

Owen, R.P. 1974. Environmental impact study on the terrestrial fauna and flora of Tinian with respect to the proposed establishment of a U.S. military base on that island. Unpublished report, Trust Territory Conservation Office, Koror, Palau. 22 pp.

Pratt, H.D., P.L. Bruner, and D.G. Berrett. 1979. America's unknown avifauna: the birds of the Mariana Islands. American Birds 33(3):227–235.

Takatsukasa, S., and Y. Yamashina. 1931. Some new birds from the Palau and Mariana Islands. Dobutsu. Zasshi 43:484–487.

### Author

The primary author of this final rule is Denal R. Herbst, U.S. Fish and Wildlife Service, 300 Ala Moana Blvd., P.O. Box 50167, Honolulu, Hawaii 96850 (808/546-7530).

### List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

### Regulation Promulgation

## PART 17—[AMENDED]

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below:

1. The authority citation for Part 17 continues to read as follows:

**Authority:** Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

### § 17.11 [Amended]

2. Amend § 17.11(h), the List of Endangered and Threatened Wildlife, under BIRDS, as follows: in the "Status" column for the entry "Monarch Tinian . . ." change to read "T" instead of "E" and add the number "261" under the "When listed" column for the same species' entry.

Dated: March 24, 1987.

**Susan Recce,**

*Acting Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 87-7527 Filed 4-3-87; 8:45 am]

BILLING CODE 4310-55-M

# Proposed Rules

Federal Register
Vol. 52, No. 65
Monday, April 6, 1987

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 945

[Docket No. AO-150-A5]

### Idaho-Eastern Oregon Potato Marketing Order; Recommended Decision and Opportunity To File Written Exceptions To Proposed Further Amendment of Marketing Agreement and Order

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed rule and opportunity to file exceptions.

**SUMMARY:** This recommended decision invites written exceptions on proposed amendments to the marketing agreement and order for potatoes grown in certain counties in Idaho and Malheur County, Oregon. The proposed amendments would authorize the appointment by the committee of public advisors, change the term of office for committee members to two years, and limit committee tenure to three consecutive terms. In addition, the proposed amendments would change nomination procedures for nominating committee members to permit nominations by mail and allow use of dates, other than those specified, for performing the procedures in the nomination process. Changes are also proposed that would revise the written acceptance procedures required of persons appointed as committee members; that would remove the limit on compensation to committee members; that would remove the limit on handler assessments by permitting assessments to be charged on a per unit basis; and that would provide for a larger operating reserve for excess funds. Provision would also be made for periodic continuance referenda. All of these proposed changes would improve the committee's operations and procedures.

**DATE:** Written exceptions must be filed by May 6, 1987.

**ADDRESS:** Written exceptions should be filed with the Hearing Clerk, U.S. Department of Agriculture, Room 1077-S, Washington, DC 20250. Four copies of all written exceptions should be submitted, and they will be made available for public inspection during regular business hours.

**FOR FURTHER INFORMATION CONTACT:** James M. Scanlon, Acting Chief, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Washington, DC 20250, phone (202) 475-3914.

**SUPPLEMENTARY INFORMATION:** Prior document in this proceeding—Notice of Hearing issued November 8, 1985, and published in the November 15, 1985, issue of the **Federal Register** (50 FR 47226). This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and therefore is excluded from the requirements of Executive Order 12291.

#### Preliminary Statement

Notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to the proposed further amendment of the Marketing Agreement and Marketing Order No. 945, regulating the handling of Irish potatoes grown in designated counties in Idaho and Malheur County, Oregon, and of the opportunity to file written exceptions thereto. In addition to James M. Scanlon whose address is listed above, copies of this decision also may be obtained from Joseph C. Perrin, USDA, AMS, Green/Wyatt Federal Building, 1220 S.W. Third Avenue, Room 369, Portland, Oregon 97204. Mr. Perrin's telephone number is (503) 221-2724.

This notice is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), hereinafter referred to as the "Act," and the applicable rules of practice and procedure governing the formulation of marketing agreements and orders (7 CFR Part 900).

The proposed further amendment of the Marketing Agreement and Order No. 945 is based on the record of a public hearing held in Pocatello, Idaho, pursuant to the provisions of the Act and the applicable rules of practice and procedure on December 10, 1985. Notice of this hearing was published in the **Federal Register** on November 15, 1985 (50 FR 47226). The notice of hearing contained eight proposals submitted by the Idaho-Eastern Oregon Potato Committee, which operates under the order. The proposals pertained to adding a public advisor to the committee, limiting the tenure of committee members, changing the term of office, changing nomination procedures, making changes in fiscal operations, and requiring periodic referenda. The notice also included a proposal by the Fruit and Vegetable Division, Agricultural Marketing Service, USDA, authorizing it to make any necessary conforming changes.

The Administrator of the Agricultural Marketing Service has determined that this action would not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*). As stated in the notice of hearing, interested persons were invited to present evidence at a hearing on the probable regulatory and informational impact of the proposed rule on small businesses for the purpose of the RFA.

The Agricultural Marketing Agreement Act of 1937 (7 U.S.C. 601 through 674) requires the application of uniform rules to regulated handlers. Since handlers covered under M.O. 945 are predominantly small businesses, the order itself is tailored to the size and nature of these small businesses. During the 1985-1986 crop year, 106 handlers were regulated under M.O. 945 and handled potatoes for fresh market with an estimated crop value of $34.2 million. Given the applicable definition of a small business concern (i.e., for purposes of review pursuant to the Regulatory Flexibility Act, an agricultural services firm with average annual receipts not exceeding $3,500,000), almost all of the handlers of potatoes would fall within that definition. In addition, there are about 2,150 producers of potatoes in the production area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having average annual gross annual revenues for the last three years of less than $100,000. The majority of handlers and producers may be classified as small entities.

The proposed amendments to the agreement and order include provisions pertaining to operations of the committee (tenure and periodic

referenda) which will provide more frequent opportunity for producer votes and opportunity for a broader based representation on the committee. The addition of a public advisor would formalize the current practice of providing consumer input to committee deliberations. This would provide the committee with information on consumer or non-industry related concerns with respect to the operation of the order. The change in the term of office from one to two years would provide continuity for committee operations, since only half of the members would be selected in a given year. The change proposing that committee nominations could be held by mail would have a positive impact on small businesses. Production area growers and handlers, could avoid spending up to a day in travel and attending nomination meetings, allowing them to spend the time and resources saved at their farms or businesses. These changes are designed to enhance the administration and functioning of the marketing agreement and order and would have negligible, if any, economic impact on small businesses.

The proposed change that would allow the committee to recommend increased reimbursement to members attending meetings would impact on growers and handlers in a positive way. Increased reimbursement to members would be defrayed through assessments on all handlers. However, program operations benefit all handlers and growers and it is appropriate to provide a minimum level of compensation to members who serve in the industry's general interest.

The proposed change to allow the rate of assessment to be based on other than a fixed amount per carlot and to allow a reserve of approximately one year's budgeted expenses would improve the financial operations of the agreement and order and not adversely impact on small business. These changes would provide for more efficient funding of order operations and activities. Fresh potato shipments have stabilized in recent years and the current maximum rate specified will not be sufficient to properly fund committee operating costs in future years. Moreover, the current reserve limitation has required the committee to refund small amounts of money to handlers at comparatively high cost. Authorization of a larger reserve should eliminate these expenses.

Finally, the proposed amendments to the order would have no significant impact on small businesses' recordkeeping and reporting requirements.

**Material Issues**

The material issues of record addressed in this decision are: (1) Whether specific authority should be provided for the appointment of a public advisor or advisors to the committee; (2) whether the term of office for committee members and alternates should be changed to two years, whether the terms should be staggered, and whether tenure on the committee should be limited to three consecutive terms; (3) whether the procedure for nominating members and alternates to the committee should be changed to allow nominations by mail, and to allow flexibility in the date nominations are made; (4) whether the required written acceptance by persons appointed as committee members or alternates should be replaced by a written statement of willingness to serve by nominees; (5) whether increased payments for expenses and compensation of committee members and alternates should be allowed; (6) whether the $1.00 per carload maximum rate for handler assessments should be removed and assessments be permitted on a per unit basis; (7) whether the provision for a reserve fund should be changed to allow a larger operating reserve; (8) whether periodic continuance referenda should be held on the order; and (9) whether any minor administrative and conforming changes should be made to the order if any of these proposals were to become effective.

**Findings and Conclusions**

The findings and conclusions on the material issues, all of which are based on evidence adduced at the hearing and the record thereof, are as follows:

(1) The Idaho-Malheur County, Oregon potato marketing agreement and order (hereinafter collectively referred to as the "order") should be amended to authorize one or more public advisors appointed by the committee. Since 1980, the committee has appointed a public advisor under its general duties authorizing it to appoint such employees, agents, and representatives as it deems necessary. This proposal would formalize under the marketing order procedures for appointing such persons.

To effectuate such a change, § 945.20 "Establishment and membership" of the current order should be revised to authorize, upon recommendation of the committee, one or more nonvoting public advisors. Because the public interest is to be observed in actions taken under marketing orders, the interests of all groups including growers, handlers, and consumers should be considered. While all committee meetings are open to the public, until the appointment of the public advisor there was little direct participation by consumers. Record evidence indicates the public advisor could continue to improve the exchange of information and viewpoints between industry members and the public. A proponent witness indicated that the industry likely would continue to benefit from the judgment and knowledge that a public advisor could contribute to industry decisions.

To implement the appointment of the public advisor, § 945.20 should be amended by adding authority for the appointment of a public advisor. Record evidence indicates that the public advisor(s) should not be engaged in the commercial production of any agricultural product nor in the commercial buying, grading, or processing of such products, except as a consumer. The public advisors(s) also should not be officers, directors, or employees of any firm engaged in such activities. Also, the public advisors' position should be able to devote sufficient time and express a willingness to attend committee functions and to familiarize themselves with the practices and economics of the potato industry. They should be residents of the production area so participation would be more convenient and travel costs could be held to a minimum. The public advisor(s) should be appointed by the committee in accordance with administrative rules which should indicate the qualification requirements and the procedure by which the committee will receive names of candidates.

Record evidence shows that the public advisor's expenses and compensation would be determined by the committee and set forth in the committee by-laws. Expenses and compensation could be set at the same or different levels than for the committee members. Such expenses and compensation should be reasonable. The record shows that the expenses and compensation of public advisors should be paid from committee funds, while such advisors are carrying out duties requested by the committee. Such duties could include serving on subcommittees and special projects helping to establish meaningful dialogue between the industry and consumers.

(2) Section 945.21 "Term of office" should be amended to authorize a two-year term rather than the present one-year term, to stagger the terms of office so that approximately one-half of the

members are selected each year, and to limit the tenure of the committee members and alternates to three consecutive terms. The record indicates two-year staggered terms would be more efficient and provide better continuity. A two-year term would enable a member to become more familiar with his/her duties and to more effectively participate in committee activities. Staggered terms would be provided to ensure that at least half of the members would be experienced in committee operations, thus avoiding the possibility of a committee consisting entirely of inexperienced new members.

The notice of hearing provided that the new procedures would be instituted in 1986. This provision has been revised in the proposal since that date has passed. One method of initially accomplishing this staggering of terms would be to consecutively number the committee positions starting with producer members for Districts 1, 2, and 3, followed by handler members in similar order. Members in even-numbered positions would serve a term ending in even-numbered years, and members in odd-numbered positions would serve a term ending in odd-numbered years. The initial terms may have to be adjusted so that staggering of terms may be accomplished. Thereafter, all members and alternates would serve full two-year terms.

The term of office currently begins on June 1, but the record indicates that the committee should have the authority to recommend and the Secretary to approve a different beginning and ending date. This would provide flexibility to align committee terms with future changes which might occur in the marketing of production area potatoes or in committee operations.

It is the Department's view that a limit on tenure improves representation on marketing order committees by allowing for different and more contemporary ideas, and will be beneficial to the committee's operation. The Department's goal is to encourage and foster to the maximum extent possible broad based participation by all members of the regulated community in the administration of the marketing order. This objective is best met by such a limitation. The proponents testified that a tenure limitation would improve representation and would be beneficial to the operation of the committee.

This change is consistent with the Secretary's 1982 "Guidelines For Fruit, Vegetable, and Specialty Crop Marketing Orders" which provide for limiting committee tenure of members and alternates. The Department's policy pursuant to the guidelines is that a committee member's consecutive service be limited to a total of six years.

Therefore, it is proposed the order should be amended to limit tenure of members and alternates to three full consecutive terms. Any member or alternate member becomes ineligible to serve on the committee after having served three full consecutive terms. Any member or alternate member could again become eligible to serve on the committee by not serving on the committee for one full term as either a member or alternate member.

The hearing record also indicates that the Secretary should retain the authority to exempt an individual from the tenure limitation if the position would otherwise remain vacant for lack of eligible nominees or eligible persons willing to serve. Nevertheless, it would seem clear that such an exception would be made only in special and unusual circumstances and should not be expected as a matter of course.

(3) Section 945.25 "Nominations" should be amended to provide for the use of mail balloting as an alternative method of conducting nominations. Record evidence supports the need for this alternative. In some portions of the production area the producers and handlers are widely scattered and comparatively few in number. For example, District No. 3 covers such a large area that many growers or handlers have to travel several hundred miles to attend nomination meetings, and it has been difficult to obtain adequate industry participation. Under such circumstances a mail-ballot nominating procedure would broaden the opportunity for industry members to be involved in the selection of their representatives. The evidence further indicates that the committee should recommend, and the Secretary establish, rules for the conduct of such nominations. One possible nomination procedure, suggested at the hearing, would be for the committee to obtain producer nominee names from growers' organizations or individual growers. A ballot containing such nominees, plus space for a write-in vote, could be mailed to all known producers in that district. A confidential ballot procedure should be followed with the vote count verified by an impartial person such as a county agent or a field representative of the U.S. Department of Agriculture. The name of the person receiving the highest number of votes for each position would be submitted to the Secretary for selection.

The order should also be amended to authorize the Secretary to change the dates by which nomination meetings must be held and a nomination report be received. The evidence shows that in the event that a mail ballot procedure is recommended by the committee and approved by the Secretary, it may be necessary to adjust the dates for nomination meetings and the receipt of nomination reports.

(4) Section 945.27 "Acceptance" should be amended to allow nominees to substitute a document signifying their willingness to serve on the committee for an acceptance letter filed after appointment. Each nominee currently completes a background information form prior to selection and signs a letter of acceptance within 10 days of selection by the Secretary. Record evidence indicates the proposed change would permit one document to serve both purposes, thus eliminating an unnecessary paperwork burden. Although a written acceptance or willingness to serve would still be required, it could be completed at an earlier time when nominee background information is given to the Secretary. The proposed change could thus improve and streamline current nomination procedures.

(5) Section 945.31 "Expenses and compensation" should be amended to delete the $10 per day limit on compensation to members and alternates while performing committee duties. Compensation is intended to at least partially offset costs such as those incurred by members in having someone take their places at their farms or businesses while they are away on committee business. The limit, which was set 25 years ago, is no longer realistic. The cost of paying someone sufficiently skilled to assume the management functions of the member during his/her absence is many times the current limit of $10 per day. Record evidence shows the committee should be authorized to recommend and the Secretary approve a rate of compensation better suited to current circumstances.

(6) Section 945.42 "Assessments" should be amended to remove the current $1 per carload limit on assessments. Since railcar capacities have increased significantly since this limit was set—more than a quarter of a century ago—and the load per car may vary greatly, it has become impractical to base the assessment on a fixed rate per carload. Committee operating costs have continued to rise over the years along with the cost of living and presumably will continue to do so. However, total fresh shipments have tended to stabilize during the past six years at an annual average of slightly more than 20 million hundredweight.

Thus, assessment income under the present authority is declining. Record evidence indicates that the current maximum assessment rate of $1 per carload will not be sufficient to properly fund committee expenses for future administration of the order. Therefore, the evidence supports providing authority to establish an assessment on a unit basis as recommended by the committee and approved by the Secretary.

(7) Section 945.44 "Excess funds" should be amended to authorize funds in excess of expenses to be placed in an operating reserve not to exceed approximately one fiscal period's budgeted expenses. The order authorizes the committee to set aside excess funds in a reserve to be used for specific purposes. Such funds may be used to allow the committee to function at the beginning of a season prior to the time assessment income is available or to cover any deficits during a fiscal period in which assessment income is not sufficient to cover expenses. In order that reserve funds not be accumulated beyond a reasonable amount, however, the reserve is limited to a half-year's expenses. Record evidence indicates the current authority to have a reserve no larger than half a year's expenses has caused several problems. The committee in past seasons has had to make comparatively insignificant refunds to handlers, at a comparatively high administrative cost, when the end of season reserve exceeded the authorized limit. Record evidence indicates it is not the intent of the committee to maintain the operating reserve at the maximum level authorized by the proposal. It is deemed more desirable to set a goal of approximately three-fourths of one-year's operating expenses with the flexibility to move above or below this level as the volume of shipments varies. Record evidence shows that when the one-half year limit was put into effect significant quantities of potatoes were shipped during the summer and early fall months. This is no longer true. Most shipments now are from late fall through spring. As a result, assessment income during the summer and early fall months is quite low; and during this period committee expenses usually exceed assessment income. Record evidence indicates that increasing the allowable level for the operating reserve could alleviate these problems by use of reserve funds to offset expenses until assessment income is adequate.

(8) The order should be amended, as hereinafter set forth, to require referenda to be held relative to the continuance of the order every six years.

The Secretary of Agriculture has determined that continuation referenda are an effective means for ascertaining whether growers favor continuation of marketing order programs. Currently the order and the Act provide that the Secretary shall terminate the program if a majority of all producers favor termination and such majority produced more than 50 percent of the commodity for market. Since less than 50 percent of all producers usually participate in a referendum, it is difficult to determine producer support for termination of an order. Thus, in order to provide a basis for determining whether producers favor continuance of the order, a new paragraph (d) should be added to § 945.83 to authorize continuance referenda. Current paragraph (d) should be redesignated as paragraph (e). The results of such referenda should be based upon the same percentage of support required in section 8c(8) of the Act with respect to producer approval of the issuance of a marketing order. The Secretary would consider termination of the order if less than two-thirds of the producers voting in the referendum and producers of less than two-thirds of the volume of potatoes represented in the referedum favor continuance. However, in evaluating the merits of continuance versus termination, the Secretary should not only consider the results of the continuance referendum but also should consider sll other relevant information concerning the operation of the order and the relative benefits and disadvantages to producers, handlers, and consumers in order to determine whether continued operation of the order would tend to effectuate the declared policy of the Act. In this regard, in the event of an adverse vote by producers in a continuance referendum, the Secretary may solicit input from the public through meetings, press releases, or any other means. In any event, section 8c(16)(B) of the Act requires the Secretary to terminate the order whenever the Secretary finds that a majority of all producers favor termination, and such majority produced more than 50 percent of the commodity for market. To be effective, termination of the order should be announced on or before the last day of the then current fiscal period. This date precedes the beginning of the committee's operation for a new fiscal period and is considered to be an appropriate time to wind down the operations of the order.

In addition, the Secretary's 1982 "Guidelines For Fruit, Vegetable, and Specialty Crop Marketing Orders" provide for periodic referenda to allow producers the opportunity periodically to indicate their support for or rejection of the order. It is the position of the Department that periodic referenda ensure that the program continues to be accountable to the producers, obligate producers to evaluate their program periodically, and involve them more closely in its operations. The record evidence supports these goals.

The committee's proposal provided that the committee should recommend to the Secretary within every 10-year period that a referendum be conducted. It is the Department's view that ten years between referenda is too long a period to insure that the referenda will reflect producer support or opposition to the order in the face of rapidly changing market conditions; and voting twice during this period, or each five years, would be costly and administratively burdensome to both the committee and the Department. A referendum every six years would allow producers the opportunity to vote for or against the continuance of the order as changes occur in the industry yet would not be wasteful of Department or committee resources. For that reason, it is proposed that the order be amended to provide for periodic continuance referenda to be held within each six year period.

(9) In the November 15, 1985, Notice of Hearing the Department of Agriculture made a proposal to authorize it to make such other changes as may be necessary to make the entire order conform with any amendments that may have resulted from the hearing. None were necessary.

**Rulings on Briefs of Interested Persons**

At the conclusion of the hearing the Administrative Law Judge fixed January 21, 1986, as the final date for interested persons to file proposed findings and conclusions or written arguments and briefs based on the evidence received at the hearing. None were filed.

**General Findings**

Upon the basis of the record it is found that:

(1) The findings hereinafter set forth are supplementary to the previous findings and determinations which were made in connection with the issuance of the marketing agreement and order and each previously issued amendment thereto. Except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein all of the said prior findings and determinations are hereby ratified and affirmed;

(2) The marketing agreement and order, as amended, and as hereby proposed to be further amended, and all of the terms and conditions thereof, will

tend to effectuate the declared policy of the Act;

(3) The marketing agreement and order, as amended, and as hereby proposed to be further amended, regulate the handling of potatoes grown in the production area in the same manner as, and are applicable only to persons in the respective classes of commercial and industrial activity specified in, the marketing agreement and order upon which a hearing has been held;

(4) The marketing agreement and order, as amended, and as hereby proposed to be further amended, are limited in their application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several orders applicable to subdivisons of the production area would not effectively carry out the declared policy of the Act;

(5) The marketing agreement and order as amended, and as hereby proposed to be further amended, prescribe, so far as practicable, such different terms applicable to different parts of the production area as are necessary to give due recognition to the differences in the production and marketing of potatoes grown in the production area; and

(6) All handling of potatoes grown in the production area as defined in the marketing agreement and order, as amended, and as hereby proposed to be further amended, is in the current of interstate or foreign commerce or directly burdens, obstructs or affects such commerce.

**List of Subjects in 7 CFR Part 945**

Marketing agreements and orders, Potatoes, Idaho, Oregon.

**Recommended Further Amendment of the Marketing Agreement and Order**

The following amendment of the marketing agreement and order, as amended, is recommended as the detailed means by which the foregoing conclusions may be carried out:

1. The authority citation for 7 CFR Part 945 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

## PART 945—IRISH POTATOES GROWN IN CERTAIN DESIGNATED COUNTIES IN IDAHO, AND MALHEUR COUNTY, OREGON

The proposed amendment, set forth below, has not received the approval of the Secretary of Agriculture.

**Proposal No. 1**

Add a new § 945.20(d) as follows:

**§ 945.20 Establishment and membership.**

* * * * *

(d) The committee may appoint such public advisors as it deems appropriate and determine the expenses, compensation, and define the duties of such advisors. Each person appointed as a public advisor shall be a resident of the production area. Also, each shall at the time of appointment and during the term of office not be engaged in the commercial production, buying, grading, or processing of any agricultural commodity, except as a consumer, nor shall such person be a director, officer, or employee of any firm so engaged.

**Proposal No. 2**

Revise § 945.21 to read as follows:

**§ 945.21 Term of office.**

(a) Except as otherwise provided in this section, the term of office of committee members and alternates shall be for two years beginning June 1 or such other date as recommended by the committee and approved by the Secretary. The term of office of members and alternates shall be so determined that approximately one-half of the total producer and handler committee membership shall terminate each year.

(b) Committee members and alternates shall serve during the term of office for which they are selected and have qualified and continue until their successors are selected and have qualified: Except that beginning with the 1987 term of office, no member or alternate shall serve more than three full consecutive terms without approval of the Secretary.

**Proposal No. 3**

Amend § 945.25 as follows:

(1) Revise paragraphs (a) and (c).

(2) Redesignate paragraph (f) as paragraph (e).

(3) Redesignate paragraph (g) as paragraph (f).

(4) Revise paragraph (e) and redesignate it as paragraph (g).

**§ 945.25 Nominations.**

* * * * *

(a) In order to provide nominations for producer and handler committee members and alternates, the committee shall hold, or cause to be held, prior to April 1 of each year, or such other date as the Secretary may designate, one or more meetings of producers and of handlers in each district to nominate such members and alternates; or the committee may conduct nominations by mail in a manner recommended by the committee and approved by the Secretary.

* * * * *

(c) At least one nominee shall be designated for each position as member and for each position as alternate member on the committee.

* * * * *

(g) Nominations shall be supplied to the Secretary in such manner and form as the Secretary may prescribe, not later than May 1 of each year, or such other date as the Secretary may specify.

**Proposal No. 4**

Revise § 945.27 as follows:

**§ 945.27 Acceptance.**

Any person nominated to serve on the committee as a member or as an alternate shall qualify by filing a statement of willingness to serve with the Secretary.

**Proposal No. 5**

Revise § 945.31 to read as follows:

**§ 945.31 Expenses.**

Committee members and alternates shall be reimbursed for reasonable expenses necessarily incurred by them in the performance of their duties and in the exercise of their powers under this subpart, and may receive compensation at a rate determined by the committee, and approved by the Secretary, for each day or portion thereof, spent in conducting committee business.

**Proposal No. 6**

Revise paragraph (b) of § 945.42 to read as follows:

**§ 945.42 Assessments.**

* * * * *

(b) Assessments shall be levied upon handlers at a rate per unit established by the Secretary. Such a rate may be established by the Secretary upon the basis of the committee's recommendation or other available information.

* * * * *

**Proposal No. 7**

In § 945.44 revise the heading; delete the introductory paragraph; revise paragraph (a) and paragraph (b) to read as follows:

**§ 945.44 Excess funds.**

(a) The funds remaining at the end of a fiscal period which are in excess of the expenses necessary for committee operations during such period may be carried over into following periods as a reserve. Such reserve shall be established at an amount not to exceed

approximately one fiscal period's budgeted expenses. Funds in such reserve shall be available for use by the committee for expenses authorized under § 945.40.

(b) Funds in excess of those placed in the operating reserve shall be credited proportionately against a handler's operations of the following fiscal period, except that if the handler demands payment, such proportionate refund shall be paid to such handler.

* * * * *

**Proposal No. 8**

Section 945.83 is amended by redesignating paragraph (d) as paragraph (e) and adding a new paragraph (d) to read as follows:

**§ 945.83 Termination.**

* * * * *

(d) The Secretary shall conduct a referendum as soon as practicable after July 31, 1992, and at such time every sixth year thereafter, to ascertain whether continuance of this order is favored by potato producers. The Secretary may terminate the provisions of this order at the end of any fiscal period in which the Secretary has found that continuance of this order is not favored by producers who, during a representative period determined by the Secretary, have been engaged in the production for market of potatoes in the production area. Termination of the order shall be effective only if announced on or before July 1 of the then current fiscal period.

* * * * *

Signed at Washington, DC, on March 27, 1987.

J. Patrick Boyle,

*Administrator.*

[FR Doc. 87-7431 Filed 4-3-87; 8:45 am]

BILLING CODE 3410-02-M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### 18 CFR Parts 4, 11, and 375

**[Docket No. RM87-6-000]**

### Fees for Hydroelectric Project Applications to Reimburse Fish and Wildlife Agencies

March 30, 1987.

**AGENCY:** Federal Energy Regulatory Commission.

**ACTION:** Proposed rule; correction.

**SUMMARY:** On March 11, 1987, the Federal Energy Regulatory Commission issued a Notice of Proposed Rulemaking in Docket No. RM87-6-000. This notice add an item omitted from that notice of proposed rulemaking.

**FOR FURTHER INFORMATION CONTACT:** Robert C. Fallon, Rulemaking and Legislative Analysis, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, (202) 357-8540.

**SUPPLEMENTARY INFORMATION:** The Federal Energy Regulatory Commission issued a notice of proposed rulemaking in Docket No. RM87-6-000 on March 11, 1987, 52 FR 8463 (March 18, 1987). The notice of proposed rulemaking established fees to be paid by an applicant for a hydroelectric project that is required to meet terms and conditions set by the Fish and Wildlife Service, the National Marine Fisheries Service and state fish and wildlife agencies. That notice inadvertantly omitted a person to contact concerning this rulemaking. Therefore, the following information is added in FR Doc. 87-5682 appearing on page 8463 in the issue of March 18, 1987:

On page 8463 column three, after the address to send filings concerning this docket and before the introduction to the notice of proposed rulemaking insert the following:

**FOR FURTHER INFORMATION CONTACT:** Grace Kim, Hydroelectric Licensing, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, (202) 357-5768.

Kenneth F. Plumb,

*Secretary.*

[FR Doc. 87-7476 Filed 4-3-87; 8:45 am]

BILLING CODE 6717-01-M

## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

### 30 CFR Part 733

### Petition to Initiate Rulemaking on Surface Coal Mining and Reclamation Operations—Permanent Regulatory Program; Procedures for Evaluating State Programs, Substituting Federal Enforcement of State Programs and Withdrawing Approval of State Programs

**AGENCY:** Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

**ACTION:** Notice of decision on petition for rulemaking.

**SUMMARY:** The Office of Surface Mining Reclamation and Enforcement (OSMRE) is making available to the public its final decision on a petition for rulemaking from ten citizens' organizations. The petitioners requested that OSMRE amend existing regulations concerning procedures for evaluating State programs, substituting Federal enforcement of State programs and withdrawing approval of State programs. On April 1, 1987, the Director made a decision to deny the petition.

**ADDRESS:** Copies of the petition, and other relevant materials comprising the administrative record of this petition are available for public review and copying at OSMRE, Administrative Record, Room 5315, 1100 "L" Street, NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Mr. Arthur W. Abbs, Chief, Division of State Program Assistance, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue, NW., Washington, DC 20240; Telephone: (202) 343-5351.

**SUPPLEMENTARY INFORMATION:**

**I. Petition for Rulemaking Process**

Pursuant to section 201(g) of the Surface Mining Control and Reclamation Act, any person may petition the Director of OSMRE for a change in OSMRE's regulations. Under the applicable regulations for rulemaking petitions, 30 CFR 700.12, if the Director determines the petition has a reasonable basis, he shall publish notice in the **Federal Register** seeking comments on the petition and the Director may hold a public hearing, conduct and investigation, or take other action to determine whether the petition should be granted. If the petition is granted, the Director initiates a rulemaking proceeding. If the petition is denied, the Director notifies the petitioner in writing setting forth the reasons for denial. Under § 700.12(d), the Director's decision constitutes the final decision of the Department of the Interior.

**II. Petition Submitted by Ten Citizens' Organizations on November 13, 1985**

On November 13, 1985, OSMRE received a petition submitted by ten citizen's organizations to amend OSMRE's existing regulations under 30 CFR Part 733 concerning procedures for evaluating State programs, substituting Federal enforcement of State programs and withdrawing approval of State programs.

The petitioners are: The Dakota Resource Council, Environmental Policy Institute, Illinois South Project, Legal Environmental Assistance Foundation, Northern Plains Resource Council, Powder River Basin Resource Council,

Public Lands Institute, Save Our Cumberland Mountains, Western Colorado Congress, and Western, Organization of Resource Councils.

On January 3, 1986, OSMRE published on notice in the **Federal Register** (51 FR 272) requesting comments on the petition. The comment period closed on February 3, 1986. A number of interested parties requested that additional time be provided to submit comments. Therefore, on February 4, 1986, OSMRE published a second notice extending the comment period until March 5, 1986 (51 FR 4390).

Subsequently, as part of its ongoing efforts to implement the Phase II actions recommended in the 1985 management report of the House Committee on Interior and Insular Affairs, OSMRE held a conference in Washington, DC on August 13 and 14, 1986. The purpose of the conference was to have an exchange of views on two topics: (1) OSMRE's use of ten-day notices and Federal notices of violation, and (2) criteria and procedures for substituting Federal enforcement and withdrawing approval of a State regulatory program under SMCRA. OSMRE published a notice in the **Federal Register** on July 29, 1986 (51 FR 27059), to announce its intent to sponsor the conference and to announce that comments from the conference would be considered in OSMRE's review of the petition for rulemaking.

Following the conference, OSMRE on September 2, 1986, extended the public comment period until September 29, 1986, on the conference topics and on the portion of the petition related to substitution of Federal enforcement and withdrawal of approval of State programs (51 FR 31140). OSMRE received 39 comments during the comment periods.

For the reasons discussed in the appendix to this notice, the Director is denying the petition to initiate rulemaking. Therefore, no further rulemaking action will occur.

The Director's letter to the petitioners on this rulemaking petition appears as a appendix to this notice. This letter reports the Director's decision to the petitioners. It also contains a summary description of the issues raised by the petitioners, a discussion of the applicable statutory provisions, OSMRE's current regulatory program, an analysis of the petitioners' proposed regulatory changes, an analysis of the petitioners' reasons why the petition should be granted and a discussion of comments on the petition.

**Arthur W. Abbs,**

*Acting Assistant Director, Program Policy Office of Surface Mining Reclamation and Enforcement.*

## Appendix

The Director's letter dated April 1, 1987, to the petitioners on the rulemaking petition is as follows:

April 1, 1987.

Ms. Rose Sickler,

*Dakota Resource Council, 29 Seventh Avenue, West, Dickenson, North Dakota 58901.*

Dear Ms. Sickler: This letter is in response to the September 3, 1985 petition for rulemaking submitted to the Office of Surface Mining Reclamation and Enforcement (OSMRE) by the Dakota Resource Council, Environmental Policy Institute, Illinois South Project, Legal Environmental Assistance Foundation, Northern Plains Resource Council, Powder River Basin Resource Council, Public Lands Institute, Save Our Cumberland Mountains, Western Colorado Congress, and Western Organization of Resource Councils (petitioners) requesting amendments to the Federal regulations concerning oversight of State regulatory programs.

On January 3, 1986, OSMRE published a notice in the **Federal Register** (51 FR 272) requesting public comments on the petition. A number of interested parties requested that additional time be provided to submit comments. Therefore, on February 4, 1986, OSMRE published a second notice extending the comment period until March 5, 1986 (51 FR 4390).

Subsequently, as part of its ongoing efforts to implement the Phase II actions recommended in the 1985 management report of the House Committee on Interior and Insular Affairs, OSMRE held a conference in Washington, DC, on August 13 and 14, 1986. The purpose of the conference was to have an exchange of views on two topics: 1) OSMRE's use of ten-day notices and Federal notices of violation, and 2) criteria and procedures for substituting Federal enforcement and withdrawing approval of a State regulatory program under SMCRA. OSMRE published a notice in the **Federal Register** on July 29, 1986 (51 FR 27059), to announce its intent to sponsor the conference and to announce that comments from the conference would be considered in OSMRE's review of the petition for rulemaking.

Following the conference, OSMRE on September 2, 1986, extended the public comment period until September 29, 1986, on the conference topics and on the portion of the petition related to substitution of Federal enforcement and withdrawal of approval of State programs (51 FR 31140). OSMRE received 39 comments during the comment periods.

For the reasons discussed in the enclosed analysis, I am denying the petition to initiate rulemaking. OSMRE already has regulations in place which sufficiently detail the criteria and procedures for evaluating State regulatory programs. The petitioners have not persuaded me that the issues that concern them, previously considered in two rulemakings on the same subject, warrant revision of the regulations. Therefore, no further rulemaking action will occur. As provided in 30 CFR 700.12(d), my decision constitutes the final decision of the Department of the Interior.

I appreciate your interest in the surface coal mining and reclamation program.

Sincerely,

Jed. D. Christensen,

*Director.*

Enclosure: (identical letter provided to 9 other addressees).

Identical letter provided to the below listing:

Ms. Suellen Keiner, Environmental Policy Institute, 218 D. Street, SE., Washington, DC 20003

Ms. Melanie Baise, Illinois South Project, 116-½ West Cherry, Herrin, Illinois 62948

Ms. Carol Nickle, Legal Environmental Assistance Foundation, 530 South Gay Street, #204, Knoxville, Tennessee 37902

Mr. Keith Powell, Northern Plains Resource Council, 419 Stapleton, Billings, Montana 59101

Mr. Dan Flaherty, Powder River Basin Resource Council, 48 North Main, Sheridan, Wyoming 82801

Ms. Carolyn R. Johnson, Public Lands Institute, 286 South Gilpin Street, Denver, Colorado 80209

Ms. Susan Williams, Save Our Cumberland Mountains, Box 457, Jacksboro, Tennessee 37757

Ms. Teresa Ericson, Western Colorado Congress, P.O. Box 472, Montrose, Colorado 81402

Mr. Pat Sweeney, Western Organization of Resource Councils, 412 Stapleton Building, Billings, Montana 59101

## Decision on Petition to Initiate Rulemaking on Procedures for Evaluating State Programs, Substituting Federal Enforcement of State Programs and Withdrawing Approval of State Programs

### *Background on Petition*

On November 13, 1985, the Office of Surface Mining Reclamation and Enforcement (OSMRE) received a petition to initiate rulemaking submitted by ten citizens organizations. The petitioners proposed that OSMRE amend its regulations under 30 CFR Part 733 concerning procedures for evaluating State programs, substituting Federal enforcement of State programs and withdrawing approval of State programs. The petition was published in the **Federal Register** on January 3, 1986 (51 FR 272), and public comment sought for 30 days. On February 4, 1986, the comment period was extended for an additional 30 days (51 FR 4390) until March 5, 1986.

Subsequently, as part of its ongoing efforts to implement the Phase II actions recommended in the July 1985 report prepared by the staff of the Committee on Interior and Insular Affairs entitled "Management Review of the Office of Surface Mining", OSMRE held a conference in Washington, DC, on August 13 and 14, 1986. The purpose of the conference was to have an exchange of views on two topics: (1) OSMRE's use of ten-day notices and Federal notices of violation, and (2) criteria and procedures for substituting Federal enforcement and withdrawing approval of a State regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). OSMRE published a notice in the **Federal Register** on July 29, 1986 (51 FR 27059), to announce its intent to sponsor the conference and to announce that comments from the conference would be considered in OSMRE's review of the petition for rulemaking.

Following the conference, OSMRE on September 2, 1986, extended the public comment period until September 29, 1986, on the conference topics and on the portion of the petition related to substitution of Federal enforcement and withdrawal of approval of State programs (51 FR 31140). OSMRE received 39 comments during the comment periods.

*Substance of Petition*

The petitioners's proposals can be categorized as follows. First, they proposed that OSMRE amend its regulations under 30 CFR Part 733 to provide detailed procedures for OSMRE's annual evaluation of State programs under SMCRA. Secondly, they proposed that OSMRE modify the existing procedures under 30 CFR Part 733 regarding the withdrawal of approval of State programs.

With regard to the annual evaluation of State programs, the petitioners proposed that the Director develop uniform procedures for conducting the annual evaluations. Under the petitioners' proposal, each annual evaluation of a State program would contain statistical information and analysis of major categories and subcategories. The procedures developed by the Director would ensure a comprehensive evaluation of State programs and provide for the evaluation of all major categories and subcategories. The petitioners' proposal also called for the establishment of acceptable performance levels for each program subcategory evaluated. In addition, the petitioners proposed that the Director provide a hearing opportunity and a 45-day comment period on draft evaluation reports. In preparing the annual reports the Director would be required to consider all relevant information, including public comment, issue written findings on all parts of the State program, respond to all public comments in the final report, publish notice of availability of the final report in the **Federal Register** and send the final report to all persons who commented.

With respect to OSMRE's procedures regarding the withdrawal of approval of State programs, the petitioners proposed that OSMRE modify its rules to require that whenever OSMRE or any interested person identifies any failure of the State to achieve a performance level in administering any part of its program, the Director would notify the State in writing and establish a period of time for correcting deficiencies not to exceed 90 days. They also proposed adoption of a requirement that pending completion of any changes in a State program required by the Director, the State would act in accordance with the required changes. The petitioners' proposed rules further provided that within 30 days after the period set for remedial action, the Director would publish written findings in the **Federal Register** and if the findings showed the State had failed to implement its program, the Director would hold a hearing within 30 days. In the event of negative findings, the Director would revoke the Secretary's approval of the State program. The petitioners also requested modification of OSMRE's rules to allow the decision to issue a State program evaluation or revoke a State program to be appealed by any person to the Interior Board of Land Appeals. Finally, the petitioners proposed adoption of a regulatory requirement which provides that the Director hold a hearing 30 days prior to revoking or returning a program.

*Applicable Statutory Provisions*

OSMRE's statutory obligations with respect to the evaluation of approved State regulatory programs under SMCRA are set forth under a number of sections of the Act. The key provisions are contained in sections 201, 504, 517 and 521. Section 201(c) authorizes the Secretary to make those investigations and inspections necessary to ensure compliance with the Act. Section 517(a) of SMCRA specifies that the Secretary shall make such inspections of any surface coal mining and reclamation operations as may be necessary to evaluate the administration of the approved State programs. Section 521(a) establishes the Secretary's authority to enforce the Act if the State fails to do so. Section 521(a)(1) states that if the Secretary has reason to believe that any person is in violation of any requirement of SMCRA or any permit required by SMCRA he shall notify the State regulatory authority. It further provides that the Secretary or his authorized representative shall order a Federal inspection of a mine if the State regulatory authority fails within ten days after notification by OSMRE to take appropriate action to cause violations to be corrected or show good cause for its failure to do so. Section 521(a)(2) provides that the Secretary or his authorized representative shall issue a cessation order for any violation which creates an imminent danger to the health or safety of the public or is causing or can reasonably be expected to cause significant imminent environmental harm to land, air, or water resources. Sections 504(b) and 521(b) require the Secretary to enforce any part of a State program not being enforced by the State and section 504(a)(3) provides authority for the Secretary to prepare and promulgate a Federal program if a State fails to implement, enforce, or maintain its approved State program. OSMRE's statutory responsibility to report on its "oversight" activities is set forth in section 706 of SMCRA, which provides that the Secretary shall submit annually to the President and Congress a report concerning the activities conducted by the Federal government and the States pursuant to the Act.

*Current OSMRE Regulatory Program*

OSMRE's State program evaluation policies and procedures are set forth in regulations, directives, and policy and guidance documents.

The regulations governing the evaluation of State programs, the substitution of Federal enforcement of State programs and the withdrawal of approval of State programs are contained in 30 CFR Part 733 of OSMRE's regulations. The regulations were adopted on March 13, 1979 (44 FR 15328) and revised on June 17, 1982 (47 FR 26366). These regulations provide that OSMRE shall evaluate the administration of each State program at least annually. They further provide that upon the request of any interested person, OSMRE will conduct an evaluation of a State program after verifying the fact presented by the person establishing the need for the evaluation. Also contained in this section of OSMRE's rules are the requirements and procedures pertaining to Federal enforcement of any part of a State program not being enforced by the

State and to withdrawal of approval of a State program if a State fails to administer or enforce its program.

The requirements pertaining to Federal inspection and enforcement activities in States with approved regulatory programs are contained in 30 CFR Parts 842 and 843. The regulations were adopted on March 13, 1979 (44 FR 15456) and revised on August 16, 1982 (47 FR 35635). Under 30 CFR 842.11(a)(1) authority is provided for OSMRE to conduct inspections of surface coal mining and reclamation operations as necessary to monitor and evaluate the administration of approved State programs. Under 30 CFR 842.11(b) OSMRE is required to conduct a Federal inspection upon the request of a person who has presented information to OSMRE about a possible violation or imminent danger or harm, and under 30 CFR 843.11 and 843.12 to enforce requirements of SMCRA, 30 CFR Chapter VII, the State program and permit conditions under a State program not being enforced by a State.

Detailed procedures for conducting Federal inspections and other evaluation activities and for preparing the annual reports to Congress presenting OSMRE's evaluation findings for each State with an approved regulatory program are contained in directives and policy and guidance documents. These documents are discussed below under "Analysis of Petitioners' Proposals."

*Analysis of Petitioners' Proposals*

1. Proposed 733.12(a)

(a) *Proposal:* The petitioners proposed that OSMRE promulgate specific uniform procedures to evaluate State regulatory programs on an annual basis.

*Response:* OSMRE has already promulgated regulations to implement its oversight responsibilities after providing opportunity for public comment. The regulations at 30 CFR Parts 733, 842 and 843, among others, implement the oversight requirements of the Act. Detailed procedures for evaluating State programs have been established through directives and other policy and guidance documents. OSMRE has developed the following documents in an effort to ensure consistent and comprehesive evaluations of State programs: "Plans and Procedures for the Evaluation of the States' Permanent Programs" (March 5, 1982); "Sampling Method for Conducting Federal Inspections in States with Approved Surface Mining Regulatory Programs" (March 13, 1981); "Format and Outline for the Annual Evaluation Reports" (July 30, 1986); "Procedures for the Evaluation of State Permitting Operations" (July 30, 1986). Two of these are directives and two are policy and guidance documents. The "Format and Outline for Annual Evaluation Reports" is revised annually on the basis of comments received from OSMRE staff, States and the public concerning problems or concerns in implementing the prior year's guidance and to alter the focus or emphasis of OSMRE's review of certain program areas as circumstances point to the need for such change. Thus, the petitioners' concern has already been met in that OSMRE has established detailed procedures for evaluating State programs.

Detailed procedures have been established through directives and other policy and guidance documents rather than rules for two reasons. First, the use of guidance documents allows OSMRE the necessary flexibility to revise its procedures to respond to changing needs and concerns relating to the States' implementation of their programs and to devise and incorporate evaluation techniques which recognize the variability of surface coal mining operations in States with approved regulatory programs. Each year, efforts are made to draw on the experience of OSMRE staff and the knowledge and expertise of groups and individuals outside the agency to improve the quality of OSMRE's evaluation methods and reporting techniques. Second, it allows OSMRE's Field Office Directors discretion in applying the established policies and procedures. Such discretion is necessary as each State program includes provisions which reflect unique environmental conditions or other State-specific factors which must be taken into consideration.

In summary, it is OSMRE's position that the evaluation of State regulatory programs should be conducted in accordance with standard procedures to ensure fair, comprehensive and consistent evaluations. OSMRE has developed policy and guidance documents which are intended to accomplish this while allowing for the variability in State programs. OSMRE does not support the adoption of additional detailed oversight procedures as rules as this would restrict the Director's discretion to modify its evaluation procedures to respond to changing circumstances or needs, and the Field Office Directors' discretion to adjust procedures to reflect State-specific factors.

(b) *Proposal:* The petitioners recommended that each annual evaluation of a State regulatory program contain statistical information and analysis of all major program categories and subcategories.

*Response:* No need exists to accept petitioners' recommendation. OSMRE's existing procedures provide for the collection and analysis of statistical information for many, although not all, program categories evaluated. OSMRE has prepared and distributed to its field offices two documents which provide guidance on statistical sampling techniques relevant to the evaluation of State programs. These documents are entitled "General Guidance Memorandum on Statistical Sampling" (February 4, 1985) and "Specific Guidance Memorandum on Statistical Sampling" (February 26, 1985).

In addition, as mentioned under (1) above, OSMRE has prepared a document entitled "Sampling Method for Conducting Federal Inspections in States with Approved Surface Mining Regulatory Programs."

OSMRE's oversight procedures do not provide for the collection of statistical information for all categories of State programs evaluated. For example, analyses of a State's processes for permitting or for designating lands unsuitable for surface coal mining do not lend themselves to statistical analysis. OSMRE favors data collection and analysis when these are suitable evaluation techniques. The outline for OSMRE's annual evaluation reports on State programs provides for the inclusion of statistical information in numerous tables throughout the reports and OSMRE's analysis of this statistical information provides, to a large extent, the basis for OSMRE's conclusions about the State's performance for any given evaluation period. OSMRE staff will continue to seek improvement of its data analyses techniques to ensure that conclusions drawn from the data collected and analyzed by OSMRE accurately reflect the States' performance.

(c) *Proposal:* The petitioners advocated that the Director develop evaluation procedures which ensure a comprehensive evaluation of State programs, provide for the evaluation of major categories and subcategories, and define acceptable performance levels for each subcategory.

*Response:* As discussed under (a) above, OSMRE has developed policy and guidance documents which establish the procedures to be utilized by OSMRE in evaluating State regulatory programs on an annual basis. In particular, the "Format and Outline for Annual Evaluation Reports" provides for the review and evaluation of all major categories and

subcategories of State regulatory and AML programs and ensures that OSMRE's evaluations of State programs are comprehensive. Thus, the existing procedures accomplish two of the petitioners' objectives. OSMRE relies on the provisions of each approved State program as the criteria for evaluating the State's administration of its program. OSMRE has not established performance levels for each major category and subcategory of State programs evaluated. OSMRE reviews the State's performance in each area, identifies deficiencies and works with the State to develop action plans and timetables for resolution of all identified problems. The underlying assumption of OSMRE's evaluation strategy is that States shall fully comply with all approved program provisions.

Whenever OSMRE has facts indicating that a State is not in full compliance, OSMRE seeks to bring the State into conformance. OSMRE cannot find any support in SMCRA for establishing performance levels other than the standards established by the approved program provisions. The Act and OSMRE's regulations do provide a certain degree of flexibility with respect to the nature of the approved program provisions. Under the standards for approval of State program provisions at 30 CFR 732.15, OSMRE may approve alternatives to the Federal regulations provided these are consistent with SMCRA and no less effective than the Federal regulations. States may amend their programs at any time provided these standards are met. Each State program incorporates provisions which reflect the environmental conditions unique to the State or other factors such as preexisting State legislation which has a bearing on the State's surface mining program. Because the criteria for evaluating States' performance are the approved program provisions, the mechanism for overseeing implementation of the program already exists.

2. *Proposed 733.12(c)–(e):* The petitioners proposed that the Director provide a hearing opportunity and a 45-day comment period on draft State program evaluation reports. They also recommended that in preparing the annual evaluation reports, OSMRE consider all relevant information, including public comment, and respond to all public comments in the final reports.

*Response:* Under the existing procedures OSMRE seeks public input at the beginning of the evaluation period in developing the State-specific oversight strategy for the upcoming year. Upon completion of the report, OSMRE publishes notice in the **Federal Register** that the report is available to any interested person upon request. OSMRE is concerned that publication of draft reports with request for comments would unduly delay and complicate the evaluation process. Each year, the evaluation process involves 24 States with approved regulatory programs. If a public comment period were provided, the States would seek further time to respond. These steps, together with OSMRE's need to review additional material provided using available resources would unduly impede the timely issuance of the final reports. So long as the final annual evaluation is made publicly available, the public has an opportunity to participate. If any person is dissatisfied with the result of an annual evaluation, he has the right under 30 CFR 733.12(a) to request further review and analysis based upon any available information.

3. *Proposed 733.12(f):* The petitioners proposed regulatory language which provides that whenever OSMRE or any interested person identifies any failure of the State to achieve a performance level in administering any part of its program the Director shall notify the State in writing and establish a period of time for correcting deficiencies not to exceed 90 days.

*Response:* Under the petitioners' proposal, the Director would be required to notify States upon any person's allegation of a State failure to meet a performance level. A similar proposal was previously considered by OSMRE (44 FR 14967, March 13, 1979). OSMRE's regulation at 30 CFR 733.12(a)(2) as originally proposed provided that a request by any person could trigger an evaluation. Commenters criticized the proposed evaluation provisions as being cumbersome and obstructive. After consideration of these comments OSMRE determined that verification is necessary to avoid the initiation of proceedings for unsubstantiated complaints. Thus, the present regulations require the Director to verify the allegations prior to performing an evaluation.

OSMRE believes the present regulations at 30 CFR 733.12(b) contain a reasonable threshold for initiating the process under 30 CFR Part 733. Under current rules, the Director is required to notify a State in writing when he has reason to believe that a State is not effectively administering, maintaining, or enforcing any part of its approved State program. Any attempt to further define the circumstances under which the Director must notify the State in writing of program deficiencies (through the use of performance levels) would essentially lock OSMRE into a non-discretionary oversight role. Under the petitioners' proposal, even trivial matters could become the subject of "733" notices.

Section 102(g) of the Act makes it clear that Congress intended for OSMRE to assist the States in developing and implementing State programs. OSMRE must carefully weigh all circumstances prior to initiating the process to withdraw approval of a State's program. OSMRE believes that the Director must have discretion to decide what course of action is appropriate in each unique situation and to consider the State's capability and intent to enforce its program when initiating the process under 30 CFR Part 733. OSMRE has developed a range of options to deal with deficiencies in a State's administration of its program. OSMRE considers the petitioners' proposal to be an unworkable and ineffective approach.

With respect to the petitioners' proposal that States be limited to 90 days to correct deficiencies, OSMRE cannot find any basis for adopting this proposal. The present regulations allow the Director discretion to establish a timetable for remedial actions appropriate to the deficiencies. The proposed 90-day limit for correcting deficiencies would be unworkable in certain cases. For instance, any problems requiring regulatory or statutory changes would almost certainly not be resolved in 90 days. The Director must retain the necessary flexibility to establish a reasonable time period which reflects the nature and extent of the identified deficiencies.

4. *Proposed 733.12(b)(3):* The proposed regulation provides that pending completion of any changes in a State program required by the Director, the States shall act in accordance with the required changes.

*Response:* OSMRE finds that the petitioners' proposal conflicts with the process established for the review and approval of State program amendments set forth under § 732.17 of OSMRE's regulations. The Federal rules explicitly prohibits a State from implementing any changes until approved as program amendments. Such program amendments cannot be approved until there has been an opportunity for public participation. In essence, petitioners are advocating State implementation of program changes before operators and other members of the public are able to comment on such changes. Furthermore, the petitioners' proposal would almost

certainly be illegal under State law in many, if not all, States. For these reasons, OSMRE does not support adoption of the proposal.

5. *Proposed 733.12(g):* The petitioners advocate that OSMRE publish written notice in the **Federal Register** of informal conferences held by OSMRE upon request of the State following the Director's written notice to the State pursuant to 30 CFR 733.12(b) of OSMRE's regulations.

*Response:* The preamble to the 1978 proposed rule stated that informal conference between OSMRE and the State would be open to the public. 43 FR 41678 (September 18, 1978). As a matter of policy, OSMRE has implemented that commitment and publishes notice in the **Federal Register** of all informal conferences to be held in connection with proceeding initiated under 30 CFR Part 733 and invites the public to attend. Therefore, OSMRE believes there is insufficient reason to conduct a rulemaking on the proposal as the public interest is adequately protected by OSMRE's practice under the current regulation.

6. *Proposed 733.12(d):* The proposed regulation stipulates that within 30 days after the period set for remedial action, the Director shall publish written findings in the **Federal Register.** If the findings show the State has failed to implement its program, the Director shall hold a hearing within 30 days.

*Response:* The existing regulation at 30 CFR 733.12(d) provides that if following any informal conference, the Director still has reason to believe the State is failing to implement its program adequately, OSMRE shall notify the State and the public specifying the basis for that belief and hold a public hearing within 30 days of the period set for remedial action. Under the petitioners' proposal the hearing would not be held until 60 days following the period set for remedial action, whereas under the current Federal rule the hearing would be held within 30 days following the remedial action period. Under the current rules, notice of the hearing would be published in the **Federal Register** together with an explanation of the reasons why OSMRE has determined a hearing is necessary. OSMRE believes the current rules provide for a more expeditious process than that proposed by the petitioners while providing for adequate public participation. The petitioners have not demonstrated problems with the current process or explained why their suggested process would be better.

7. *Proposed 733.12(j):* The petitioners proposed that upon completion of the hearing, the Director shall issue findings and in the event of negative findings, the Director shall revoke the Secretary's approval of the State program.

*Response:* The agency already has regulations at 30 CFR 733.12(e) which prescribe the agency's alternatives following the hearing held under 30 CFR 733.12(d). These procedures have worked in the past and have resulted in direct Federal enforcement of portions of two State programs (Tennessee and Oklahoma) and promulgation of a Federal program for Tennessee. Petitioners have not demonstrated why the current procedures are inadequate or that their suggested alternative is better.

In addition, the proposal would eliminate OSMRE's option under existing 30 CFR 733.12(e)(1) of substituting Federal enforcement of all or part of the State program and would permit only the complete withdrawal of program approval. OSMRE previously considered and rejected adding language to § 733.12 allowing immediate withdrawal of a State program when failure in administration results in a serious threat to the environment or public (44 FR 14969, March 13, 1979). OSMRE determined that such a proposal is outside the authority of the Act. Sections 504(b) and 521(b) of the Act specifically authorize direct Federal enforcement and require certain procedural steps to be taken before the Secretary may withdraw approval of a State program. Eliminating the Federal enforcement option removes a valuable tool that allows for alleviation of serious problems in a State, while permitting a State to retain certain functions. Moreover, elimination of direct Federal enforcement leaves the agency without any transitional enforcement authority between the time OSMRE withdraws program approval and implements a Federal program should the Secretary decide that complete or partial withdrawal of program approval is necessary.

The proposal also eliminates the option of partial withdrawal of a State program. OSMRE has previously considered and rejected the suggestion to delete this alternative (44 FR 14969, March 13, 1979). The provision allowing partial withdrawal is considered a necessary response for more serious breakdowns in administration where only a certain part of the program is affected. Authority for this requirement is contained in sections 201(c), 503, 504 and 521 of the Act. In addition, the proposal would be contrary to Section 521(b) of the Act which requires a finding that not only has the State failed to effectively administer and enforce its program, but that it has also failed to demonstrate its capability and intent to do so.

8. *Proposed 733.12(i)(3):* The proposed regulation provides that the decision to issue a State program evaluation or revoke a State program may be appealed by any person to the Interior Board of Land Appeals.

*Response:* Under section 526(a) of SMCRA, the Secretary's decision to withdraw program approval is reviewable by the Federal district courts. The jurisdiction of the Interior Board of Land Appeals as set forth under 43 CFR 4.1101 has not been expanded to include the authority to exercise final decisionmaking power of the Secretary with regard to decisions on State programs. Petitioners have not demonstrated why the current process is inadequate or that their suggested alternative would be better. With respect to evaluation findings, if any person is dissatisfied with the result of an annual evaluation, he has the right under 30 CFR 733.12(a) to request further review and analysis based upon any available information.

9. *Proposed 733.12(i) (4) and (5):* The proposed provisions specify that the Director will hold a hearing 30 days prior to revoking or returning a program.

*Response:* The current rules already provide that a hearing shall be held prior to approving or revoking a State's program. OSMRE's regulation at 30 CFR 733.12(d) provides that the Director shall hold a public hearing prior to making any determination that Federal enforcement of the State's program or withdrawal of approval of the State program, in whole or in part, is necessary. In the event a State program is revoked, the State would be required to submit a new program for the Secretary's approval under 30 CFR Part 732 in order to regain primary authority for regulating surface mining activities in the State. Under 30 CFR 732.11(b), the Director is required to conduct a hearing on a State program submission prior to the Secretary's decision to approve or disapprove it.

*Analysis of Petitioners' Reasons Why Petition Should Be Granted*

In addition to the section by section analysis of the petition set forth in the preceding portion of this decision document, this portion addresses the general concerns of the petitioners. As will be seen, some of OSMRE's general responses have already been recited in the analyses of specific suggested amendments.

1. *Reason:* The petitioners asserted that the petition should be granted because OSMRE regulations are

required by law. They further contended that OSMRE has promulgated two documents which fall within the Administrative Procedure Act (APA) definition of a "rule" but which have not been promulgated as rules in accordance with the APA.

*Response:* OSMRE has already promulgated regulations, as required by the APA and the Act, to implement its oversight responsibilities under the Surface Mining Act. The regulations at 30 CFR Parts 733, 842 and 843, among others, implement the oversights requirements of the Act. As to the petitioners' second contention, the two documents the petitioners refer to are not rules subject to the notice and comment requirements of section 553 of the APA. The two documents, "Plans and Procedures for the Evaluation of the States' Permanent Programs" (March 5, 1982) and "Sampling Method for Conducting Federal Inspections in States with Approved Surface Mining Regulatory Programs" (March 13, 1981), are non-binding, internal agency guidelines and procedures that are consistent with and implement the existing regulations. Neither document binds OSMRE or the States. Both documents call for the exercise of discretion and judgment in their application and the resulting analysis is itself subject to further review by agency management.

In any event, the issue of whether the two documents are rules subject to 5 U.S.C. Section 553 of the APA is not relevant to whether the amendments suggested in the petition should be granted or denied. The petition seeks amendments to OSMRE's existing regulations which should be analyzed on their own merit, independent of procedural consideration regarding two separate documents.

2. *Reason:* The petitioners contended the OSMRE has a statutory, non-discretionary duty to oversee State regulatory programs.

*Response:* OSMRE agrees that it has a statutory duty to oversee State regulatory programs and believes that it is currently fulfilling this obligation. OSMRE has promulgated rules, established systems and procedures and developed policy and guidance documents to carry out its statutory mandate to oversee State regulatory programs. Each of these has been discussed previously in this document. OSMRE does not agree, however, that successful performance of the Secretary's duties can occur without the judicious exercise of Federal authority. For example, section 521(b) clearly provides the Secretary with discretion to determine whether, on the basis of information available to him, there is adequate reason to believe that the State is failing to enforce its program. Exercise of such authority without the careful weighing of all relevant considerations and options available could constitute a failure to satisfy statutory authority.

The Surface Mining Act provides broad discretion to the Secretary to carry out his oversight responsibilities. The manner in which he has been implementing such responsibilities is consistent with judicially enunciated principles.[1]

3. *Reason:* The petitioners advocated that OSMRE establish a systematic method to measure and evaluate the effectiveness of State programs. They contended that OSMRE's current oversight documents fail to address many aspects of State regulatory programs.

*Response:* The specific standards which OSMRE utilizes for State program evaluations are the approved provisions of each State program. Procedures for evaluating the States' administration of their programs are set forth in OSMRE's rules and in policy and guidance documents which have been previously referenced. OSMRE policy and procedural documents provide for a comprehensive evaluation of State programs and cover the methods to be used for data collection and analysis including sampling methodologies. OSMRE's regulations at 30 CFR Part 733 set forth the criteria and procedures for instituting Federal enforcement of a State program or withdrawing approval of a State program. Thus, a systematic process for measuring and evaluating the administration of State programs is already in place.

4. *Reason:* It is the petitioners' belief that OSMRE has substituted improper procedures when it has identified failures of a State to enforce all or part of its program. They asserted that OSMRE has failed to notify States in accordance with 30 CFR Part 733 when States have failed to implement, administer, maintain or enforce their programs. They indicated that the amendments which they have proposed are intended to address the problem of OSMRE substituting other actions for formal "733" letters.

*Response:* Recognizing the need to ensure that States remedy problems identified by OSMRE during the evaluation process, OSMRE has developed a range of actions to compel State compliance. For instance, OSMRE procedures now require that OSMRE Field Office Directors work with the States to develop action plans and timetables for resolution of all identified problems. OSMRE has also developed other mechanisms to address a State's failure to implement its program in full compliance with the approved provisions. The process under Part 733 of OSMRE's regulations for instituting Federal enforcement of a State program or withdrawing approval of a State program has been utilized in situations in which OSMRE's other attempts to bring a State program into conformance have failed. Any transfer of authority involves a severe strain on the resources and personnel of both the Federal government and the State. Revocation of a State's program is a serious action which OSMRE believes should be taken when the Secretary has determined that the State has failed both to effectively implement its program and to demonstrate the capability and intent to enforce its program. Clearly, OSMRE must monitor the enforcement of State programs but the Secretary must retain discretion with respect to initiating the revocation process.

5. *Reason:* The petitioners pointed out that SMCRA requires public participation in enforcement of State programs. They contended that under OSMRE's current regulations, the public has no procedure for participating in OSMRE's evaluations of State programs.

*Response:* OSMRE's existing regulations provide numerous opportunities for public input into the regulatory process. In fact, OSMRE's regulations are replete with opportunities for the public to review and comment on State actions. For instance, under 30 CFR 842.12, any person may request a Federal inspection, and under 30 CFR 733.12(a), any person may request the Director to evaluate a State program. Thus, if a citizen has information that contradicts evaluation findings contained in

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[1] In *City of Seabrook v. Costle*, 659 F. 2d 1371, 1374 (5th Cir. 1981), the court held that where enforcement actions are concerned, administrative agencies should be afforded broad discretion both in initiating such actions and in taking "the preliminary investigatory steps that would provide the basis for enforcement action." The court was interpreting section 113 of the Clean Air Act, 42, U.S.C. 7413, which contains a provision very similar to section 521(b) of the Act. Section 113 provides:

> Whenever on the basis of information available to him, the Administrator finds that violations of an applicable implementation plan are so widespread that such violations appear to result from a failure of the State in which the plan applies to enforce the plan effectively, he shall so notify the State. If the Administrator finds such failure extends beyond the 30th day after such notice, he shall give public notice of such finding.

The plaintiffs argued that the Administrator had a nondiscretionary duty to make such findings on the basis of information available to him. The court disagreed, based upon the tradition of broad prosecutorial discretion described above.

OSMRE's annual reports on State programs, the citizen may provide that information to OSMRE and request that an evaluation be conducted. Also, as a matter of policy, OSMRE seeks public input at the beginning of each evaluation period prior to formulating its oversight strategy for the upcoming year. Upon completing the annual evaluation report for a State, OSMRE publishes notice in the **Federal Register** announcing the availability of the report. Thus, initiation of a rulemaking action on the proposal is not necessary or justified at this time.

### Public Comment

OSMRE received 39 comments on this petition for rulemaking. Of those, 18 were comments received from State regulatory authorities and 16 from coal companies and industry groups. The remaining five comments were received from a U.S. Congressman, a State official, an environmental group, an interested person and the petitioners. Thirty-two of the commenters supported rejection of the petition, four supported acceptance of the petition and three of the commenters did not specify a position.

The petitioners themselves were one of the four commenters supporting acceptance of the petition. The reasons they offered in their letter were essentially the same as those provided in the petition. They commented that the present oversight program has resulted in inadequate and inconsistent evaluations, has excluded the public from participation in matters that affect its interests and has violated the agency's legal mandates. For the reasons discussed above OSMRE believes that its current oversight program complies with OSMRE's statutory obligations relative to the evaluation of State programs. OSMRE's regulations, together with its oversight policy and guidance documents, provide for the evaluation of all components of State programs in accordance with uniform procedures. OSMRE continues to seek improvement of its data collection and evaluation techniques to ensure the accuracy of its findings and conclusions about the States' administration of their programs.

On an annual basis, OSMRE seeks input on its oversight procedures from the States and other interested persons, and modifications are made to policy and guidance documents to incorporate improved strategies for evaluating State performance. OSMRE believes the existing regulations and procedures provide numerous opportunities for public participation in OSMRE's evaluation process.

The West Virginia Highlands Conservancy commented that it supports the petition but did not offer any specific rationale as to why OSMRE should accept it.

The Pennsylvania Department of Environmental Resources (DER) indicated that it supports the efforts of the petitioners to set up a formalized process for OSMRE to review and evaluate State mining programs. The State commented that it believed there is a need to establish program measures to determine the adequacy of States' performance. DER encouraged OSMRE to develop a guidance document that specifies the procedures for evaluating State programs which includes the statistical approach to be utilized and the justification as to the validity of the statistical analyses.

As previously discussed, OSMRE utilizes the approved provisions of each State program as the criteria for evaluating State performance. OSMRE's "Format and Outline for State Program Evaluations" and other oversight guidance documents establish uniform procedures for the evaluation of State programs including OSMRE's statistical sampling methodologies. Efforts are being made to improve OSMRE's data collecton and analysis techniques within the agency.

Maryann Lunderman, Attorney, also submitted certain comments supporting the petitioners' proposals. She supports the development of State evaluation procedures that are uniform and in accordance with the standard in SMCRA and urged OSMRE to publish proposed procedures in the **Federal Register** and provide the public an opportunity to review and comment on them. She further commented that the public should have the opportunity to review and comment on the annual evaluations without delaying the evaluation process.

As previously discussed OSMRE has developed and is presently using uniform procedures for evaluating the States's administraton of approved programs under SMCRA. OSMRE will continue to examine mechanisms to broaden public participation in the evaluation process without sacrificing the timeliness of the evaluation reports.

### Final Decision

Based upon the foregoing analysis and comments, I am denying the petition to initiate rulemaking. OSMRE already has regulations in place which sufficiently detail the criteria and procedures for evaluating State regulatory programs. The petitioners have not persuaded me that the issues that concern them, previously considered in two rulemakings on the same subject, warrant revision of the regulations. OSMRE will continue its efforts to improve the quality and reliability of its evaluation methodologies. A discussion of these efforts is included in the above analysis of the petitioners' proposals. OSMRE is committed to making whatever modifications are necessary to its existing policies and procedures to ensure fair, consistent and comprehensive evaluations.

[FR Doc. 87-7540 Filed 4-3-87; 8:45 am]
BILLING CODE 4310-05-M

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

### 33 CFR Part 100

### [CGD 09-87-02]

### Special Local Regulations; Budweiser Trophy Race—Detroit River

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of proposed rule making.

**SUMMARY:** The Coast Guard is considering a proposal to establish Special Local Regulations for the Budweiser Gold Cup (formerly Stroh Thunderfest) to be held on the Detroit River. This event will be held on 9, 10, 11, and 12, July 1987. The regulations are needed to provide for the safety of life on navigable waters during the event.

**DATE:** Comments must be received on or before May 4, 1987.

**ADDRESSES:** Comments should be mailed to Commander (inc), Ninth Coast Guard District, 1240 East 9th Street, Cleveland, OH 44199. The comments will be available for inspection and copying at the Ice Navigation Center, Room 2007A, 1240 East 9th Street, Cleveland, OH. Normal office hours are between 7:30 a.m. and 4:30 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered.

**FOR FURTHER INFORMATION CONTACT:** CWO Gerald M. Trackim, Office of Search and Rescue, Ninth Coast Guard District, 1240 E 9th St., Cleveland, OH 44199, (216) 522-3982.

**SUPPLEMENTARY INFORMATION:** Interested persons are invited to participate in this proposed rulemaking by submitting written views, data or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD 09-87-02) and the specific section of the proposal to which their comments apply, and give reasons for each comment. Receipt of comments will be

acknowledged if a stamped, self-addressed postcard or envelope is enclosed. The rules may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

**Drafting Information**

The drafters of this regulation are CWO GERALD M. TRACKIM, project officer, Office of Search and Rescue and LCDR C.V. MOSEBACH, project attorney, Ninth Coast Guard District Legal Office.

**Discussion of Regulations**

The Budweiser Trophy Race will be conducted on the Detroit River on the 9, 10, 11 and 12 July 1987. This event will have an estimated 25 Hydroplanes which could pose hazards to navigation in the area. Vessels desiring to transit the regulated area may do so only with prior approval of the Patrol Commander (U.S. Coast Guard Group Detroit, MI).

**Economic Assessment and Certification**

This proposed regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignficant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economical impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. This event will draw a larger number of spectation craft into the area for the duration of the event. This should have a favorable impact on commercial facilities providing services to the spectators. Any impact on commercial traffic in the area will be negligible. Since the impact of this regulation is expected to be minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

**List of Subjects in 33 CFR Part 100**

Marine safety, Navigation (water).

**Proposed Regulations**

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended as follows:

**PART 100—[AMENDED]**

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35

2. Part 100 is amended to add a temporary § 100.35–0902 to read as follows:

**§ 100.35–0902 Budweiser Trophy Race—Detroit River.**

(a) *Regulatory Area.* That portion of the Detroit River lying between Belle Isle and the U.S. shoreline, bound on the west by the Belle Isle Bridge and on the east a north-south line drawn through the Waterworks Intake Crib Light (LL 1022).

(b) *Special Local Regulations.* (1) The above area will be closed to navigation or anchorge from 7:30 A.M. (local time) until 7:00 P.M. on 9, 10, 11, and 12 July 1987.

(2) An escape zone for recreational craft will also be establishment from the Rooster Tail Marina out to Lake St. Clair.

(3) Special care shall be exercised by the Master or operator of every vessel proceeding up or down the main channel of the Detroit River between Belle Isle and Windmill Point.

(4) Vessels desiring to transit the restricted area may do so only with prior approval of the Patrol Commander and when so directed by that officer. The Patrol Commander may be contacted on channel 16 (156.8 MHZ) by the call sign "Coast Guard Patrol Commander". Vessels will be operated at a no wake speed to reduce the wake to a minimum and in a manner which will not endanger participants in the event or any other craft. Those rules shall not apply to participants in the event or vessels of the patrol, in the performance of their assigned duties.

(5) A succession of sharp, short signals by whistel or horn from vessels patrolling the areas under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Vessels signaled shall stop and shall comply with the orders of the Patrol Vessel; failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(6) *Effective Dates.* These regulations will become effective on 9 July 1987 and terminate on 13 July.

Dated: March 25, 1987.

**L.W. Garrett,**

*Chief of Staff, Ninth Coast Guard District, Captain, U.S. Coast Guard.*

[FR Doc. 87–7560 Filed 4–3–87; 8:45 am]

BILLING CODE 4910–14–M

**33 CFR Part 100**

**[CGD 09–87–01]**

## Special Local Regulations; 1987 Put In Bay Air Show, South Bass Island, OH; Lake Erie

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard is considering a proposal to establish Special Local Regulations for the Annual Put In Bay Air Show which is to be conducted adjacent to Put In Bay Airport, South Bass Island on the 14th of June, 1987. The regulations are needed to provide for the safety of life on navigable waters during the event.

**DATES:** Comments must be received on or before April 24, 1987.

**ADDRESSES:** Comments should be mailed to Commander (inc), Ninth Coast Guard District, 1240 East 9th Street, Cleveland, OH 44199. The comments will be available for inspection and copying at the Ice Navigation Center, Room 2007D, 1240 East 9th Street, Cleveland, OH. Normal office hours are between 7:30 a.m. and 4:30 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered.

**FOR FURTHER INFORMATION CONTACT:** CWO Gerald M. Trackim, Office of Search and Rescue, Ninth Coast Guard District, 1240 E 9th St., Cleveland, OH 44199, (216) 522–4420.

**SUPPLEMENTARY INFORMATION:** Interested persons are invited to participate in this proposed rulemaking by submitting written views, data or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD 09–87–01) and the specific section of the proposal to which their comments apply, and give reasons for each comment. Receipt of comments will be acknowledged if a stamped, self-addressed postcard or envelope is enclosed. The rules may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

**Drafting Information**

The drafters of this regulation are CWO Gerald M. Trackim, project officer, Office of Search and Rescue and

LT R.A. Pelletier, project attorney, Ninth Coast Guard District Legal Office.

**Discussion of Regulations**

The 1987 Put In Bay Air Show will be conducted adjacent to Put In Bay Airport, South Bass Island on the 14th of June, 1987. This event will have low flying aircraft demonstrations, high performance aircraft aerobatics, parachutists, and other events which could pose hazards to navigation in the area. In order to provide for the safety of life and property, the Coast Guard will restrict vessel movement prior to and during this event within this section of Put In Bay. A Coast Guard patrol vessel will be located at strategic locations along the regulated area to stop vessel traffic.

**Economic Assessment and Certification**

This proposed regulation is considered to be nonmajor under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. This event will draw a large number of spectator craft into the area for the duration of the event. This should have a favorable impact on commercial facilities providing services to the spectators. Any impact on commercial traffic in the area will be negligible.

Since the impact of this regulation is expected to be minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

**List of Subjects in 33 CFR Part 100**

Marine safety, Navigation (water).

**Proposed Regulations**

In consideration of the foregoing, the Coast Guard proposes to amend Part 100 of Title 33, Code of Federal Regulations, as follows:

**PART 100—[AMENDED]**

1. The authority citation for Part 100 continues to read as follows:

**Authority:** 33 U.S.C. 1233; 49 CFR 1.46 AND 33 CFR 100.35.

2. Part 100 is amended to add a temporary § 100.35–0914 to read as follows:

**§ 100.35—0901 Put In Bay Air Show, South Bass Island—Lake Erie.**

The following area will be closed to vessel navigation or anchorage from 12:00 P.M. (local time) until 4:00 P.M. on 14 June, 1987.

(a) *Restricted Area.* That portion of Lake Erie enclosed by a line running from a point at 41 degrees 34 minutes 28 seconds North, 82 degrees 52 minutes West to a point at 41 degrees 34 minutes 28 seconds North, 82 degrees 51 minutes 33 seconds West (Moore Point) to a point at 41 degrees 33 minutes 50 seconds North, 82 degrees 52 minutes West to a point at 41 degrees 33 minutes 50 seconds North, 82 degrees 51 minutes 43 seconds West (Sugar Rock) thence a point at 41 degrees 34 minutes 28 seconds North, 82 degrees 52 minutes West.

(b) *Special Local Regulations.* (1) Vessels desiring to transit the restricted area may do so only with the prior approval of the Patrol Commander and when so directed by that officer, vessels will be operated at a no make speed and in a manner which will not endanger participants in the event or any other craft. These rules shall not apply to participants, or vessels of the patrol in the performance of their assigned duties.

(2) No vessel shall anchor or drift in the area restricted to navigation.

(3) A succession of sharp, short, signals by whistle or horn form vessels patrolling the areas under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Vessels signaled shall stop and shall comply with the orders of the Patrol Vessel; failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(4) All persons in charge of, or operating vessels in the area covered by the above Special Local Regulations are required to promptly obey the directions of the Patrol Commander and the men acting under his instructions in connection with the enforcement of these Special Local Regulations.

(c) *Effective Dates.* These regulations will become effective on 14 June 1987 and terminate on 15 June 1987.

Dated: March 16, 1987.

**A.M. Danielsen,**

*Radm, U.S. Coast Guard Commander, Ninth Coast Guard District.*

[FR Doc. 87–7561 Filed 4–3–87; 8:45 am]

BILLING CODE 4910–14–M

## VETERANS ADMINISTRATION

## 38 CFR Part 17

## State Home Facilities

**AGENCY:** Veterans Administration.

**ACTION:** Proposed regulatory amendments.

**SUMMARY:** The Veterans Administration (VA) is amending its medical care regulations (38 CFR Part 17) to implement a number of statutory changes. Specifically, these regulations will implement section 105 of the Veterans' Health Care Act of 1984 (Pub. L. 98–528) which enables the VA to participate in up to 65 percent of the cost of acquisition of an existing facility or facilities by a State for use as a State home. The cost of acquisition plus renovation cannot exceed the estimated cost of an equivalent new State home facility. Purchase of land is excluded. This new authority enables the use of existing facilities and avoids the cost and time associated with new construction.

The amendments will also establish regulations for deferring approval of applications if a State does not have adequate financial support by July 1 of the fiscal year in which the VA notifies the State of the availability of Federal funds. This change implements provisions of the Veterans' Administration Health Care Amendments of 1985 (Pub. L. 99–166) and the Veterans' Benefits Improvements and Health Care Authorization Act of 1986 (Pub. L. 99–576). These Acts require the VA to defer applications for which Federal funds are available and which will meet all other requirements for a grant if by July 1 of the Federal Fiscal Year in which VA notifies the State of available funds, the State has not provided adequate financial support. The funds resulting from deferred projects may be applied to eligible nursing home and domiciliary projects which would not have been funded during the fiscal year but for the deferral and which will meet all grant requirements by the end of this fiscal year, and to which the Administrator has accorded the highest priority.

The amendment will also promulgate the regulations needed to accord priority to State home construction and acquisition grant projects as required by section 224 of the Veterans' Benefits Improvements and Health Care Authorization Act of 1986. Section 224 of the Act requires the VA to accord priority to applications for State veterans home grants and requires VA to establish a priority list by July 1 of each calendar year for State home projects for which applications have been submitted to VA. Grants will be awarded from the list during the next Federal Fiscal Year beginning October 1 of the calendar year in which the priority list was made, subject to the availability of Federal funds. The proposed amendment would implement

the requirements in the law that the VA accord priority to projects described in applications for Federal assistance for State veterans nursing home and domiciliary projects in the following order:

(1) Projects for which States have made available adequate State financial support (matching funds) so that the projects can proceed upon approval of the grant without the need for further State action to make funds available;

(2) Projects from States which have not received VA grant assistance for the construction or acquisition of State veterans home facilities;

(3) Projects from States which the Administrator determines to have a greater need for State veterans nursing home or domiciliary beds than other States; and

(4) Projects meeting other criteria the Administrator determines appropriate.

In developing the regulations to implement this priority framework, it was necessary to anticipate the likelihood that several applications might be accorded the same priority within a priority group. To assure a predictable, equitable mechanism for resolving questions of relative ranking among projects, the proposed regulatory amendemnt establishes a framework for determining such ranking. For example, to the extent that several projects are placed in "Priority Group 1" based on having made sufficient State funds available, these projects would be ranked by applying the criteria applicable to the next lower priority group (i.e. priority group 2). Highest priority among them would be given to projects from a State or States which had not previously received a grant for construction or acquisition under the program. If it becomes necessary to invoke a second tie-breaker among these projects in Priority Group 1, the proposed regulatory amendment calls for the VA to apply the criteria of the next lower priority group, i.e., Priority Group 3, so that priority would be given to projects from States determined to have a greater need for State veterans nursing home or domiciliary beds than other States.

At the same time, the VA is proposing a regulation to comply with the Single Audit Act of 1984 (Pub. L. 98–502). This Act, implemented in 38 CFR Part 41, establishes the uniform audit requirements and policy for State governments that receive Federal assistance from the VA. The proposed regulation which directs the State to follow these requirements and policy should reduce the number of Federal audits of State governments. Finally, certain requirements are being deleted because they are outdated and others are being updated and clarified.

**DATES:** Comments must be received before May 6, 1987.

**ADDRESS:** Interested persons are invited to submit written comments, suggestions, or objections to: Administrator of Veterans Affairs (217A), Veterans Administration, 810 Vermont Avenue, NW., Washington DC 20420. All written comments received will be available for public inspection only at the Veterans Administration Central Office, Veterans Services Unit, Room 132, at the above address, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays) until April 16, 1987.

**FOR FURTHER INFORMATION CONTACT:** F. Brent Baker (202) 233–3854.

**SUPPLEMENTARY INFORMATION:** Provisions of 38 CFR Part 17 regarding the VA's State Home Program need updating and revising to implement pertinent sections of the following Public Laws: Pub. L. 98–502 (Single Audit Act of 1984); Pub. L. 98–528 (Veterans' Health Care Act of 1984), which provides for the Federal Acquisition of State Home facilities as long as the total cot of acquisition of the facility including any expansion, remodeling, and/or alterations will not be greater than the estimated cost of construction of an equivalent new facility; Pub. L. 99–166 (Veterans' Health Care Amendments of 1985) which provides regulatory authoirty to defer approval of an application for a State home construction or acquisition grant if the State does not have adequate State financial support by July 1 following receipt of a VA notice of availability of funds; and Pub. L. 99–576 (Veterans' Benefits Improvements and Health Care Authorization Act of 1986), which provides regulatory authority to accord priority to request for Federal assistance for the construction or acquisition of a State veterans nursing home or domiciliary. The VA proposes to make these amendments and at the same time delete outdated construction standards and clarify and update some of the technical details of the construction standards currently found in 38 CFR 17.170 through 17.177.

These proposed regulatory amendments to VA regulations are considered nonmajor under the criteria of Executive Order 12291, Federal Regulation, on the basis that they will not have an annual effect on the economy of $100 million or more, they will not result in major increases in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions, regions, nor will they have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Administrator of Veterans Affairs certifies that these proposed regulatory amendments will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 through 612. Pursuant to 5 U.S.C. 605(b), these proposed regulatory amendments are exempt from the initial and final regulatory flexibility analyses requirements of sections 603 through 604. The reason for this certification is that these proposed regulatory amendments will affect only construction or acquisition grants for State Veterans Homes. They will, therefore, have no significant impacts on small entities (i.e. small business, small private and nonprofit organizations, and small governmental jurisdictions).

The catalog of Federal Domestic Assistance program numbers are 64.014, 64.015, and 64.016 and 64.005.

**List of Subjects in 38 CFR Part 17**

Alcoholism, Claims, Dental health, Drug abuse, Foreign relations, Government contracts, Grant programs—health, Grant programs—veterans, Health care, Health facilities, Health professions, Medical and dental schools, Medical devices, Medical research, Mental health programs, Nursing homes, Philippines, Veterans.

Approved: March 16, 1987.

**Thomas K. Turnage,**

*Administrator.*

## PART 17—[AMENDED]

38 CFR Part 17, MEDICAL, is proposed to be amended as follows:

1. Section 17.168 is added to read as follows:

**§ 17.168 Audit of State homes.**

The State must comply with the Single Audit Act of 1984 (Part 41 of this title.) (31 U.S.C. 7501–7507)

2. The centerheading and note which precede § 17.170 are revised to read as follows:

**Grants to States for Construction or Acquisition of State Home Facilities**

**Note:** The purpose of the regulations concerning grants to States for construction or acquisition of State home facilities is to effectuate the provisions of 38 U.S.C. 5031 through 5037 and to assist the several States

to construct or acquire State home facilities for furnishing domiciliary or nursing home care to veterans, and to expand, remodel, or alter existing buildings for furnishing domiciliary, nursing home or hospital care to veterans in State homes.

3. In § 17.170 the introductory text, paragraphs (d) and (e) are revised and paragraphs (f), (g), (h), (i),and (j) are added to read as follows:

**§ 17.170 Definitions.**

For the purpose of the regulations concerning grants to States for construction or acquisition of State home facilities:

* * * * *

(d) The term "cost of construction" means the amount which the Administrator determines to be necessary for a State Home construction project, including architect fees, supervision and site inspection services, printing and advertising costs, but excluding land acquisition costs. (38 U.S.C. 5031(d))

(e) The term "State agency" means that State agency or instrumentality of a State designated by a State as authorized to apply for assistance to construct or acquire State home facilities for veterans and thereafter administer those facilities.

(f) The term "acquisition" means the purchase of a facility for use as a State veterans home for the provision of domiciliary and/or nursing home care to veterans. An acquisition includes any remodeling or alteration needed to meet existing standards.

(g) The term "cost of acquisition" means the amount which the Administrator determines to be necessary to acquire and renovate a facility for the provision of domiciliary or nursing home care as a State home.

(h) As used in connection with a request from a State for a grant to assist in the construction or acquisition of a State veterans home:

(1) The term "preapplication" means the State's submission to the Administrator of a preapplication for Federal Assistance on Standard Form 424 with an accompanying space program and schematics for the project; and

(2) The term "application" means the submission to the Administrator of an application for Federal Assistance for a project on Standard Form 424 after the Veterans Administration has reviewed the State's preapplication for the project and informed the State that it is a feasible project for Federal participation.

(i) The term "life safety project" means a State veterans nursing home or domiciliary project which would remedy an existing condition which has been cited by the Veterans Administration, a State or local agency (including a Fire Marshal), or the Joint Commission on Accreditation of Hospitals, as threatening to the lives or safety of patients within the facility.

(j) The term "renovation project" means a project to expand, remodel or alter a State veterans nursing home or domiciliary which is not a life safety project and does not result in the addition of domiciliary or nursing home beds.

4. In § 17.171, paragraph (a) is revised to read as follows:

**§ 17.171 Maximum number of nursing home beds required for veterans by State.**

(a) For purposes of these regulations, Appendix A prescribes the maximum number of beds which may be necessary to provide adequate nursing home care and domiciliary care to veterans residing in each State. When the nursing home beds to be constructed or acquired in a State will result in more than 2½ beds per 1,000 veterans, the State shall provide sufficient justification for the Administrator to determine that the additional beds are required in that State. In making this determination, the Administrator shall consider the following factors:

* * * * *

5. Section 17.172 is revised to read as follows:

**§ 17.172 Scope of grants program.**

Subject to the availability of an appropriation, a grant may be made to a State which has submitted an application for assistance to construct (or to acquire) State home facilities (if the application has been approved by the Administrator) as prescribed in §§ 17.170 through 17.177.

6. In § 17.173, paragraph (e) is redesignated as paragraph (h); the introductory text of paragraph (a), paragraphs (a)(1), (a)(4), (b)(5), (b)(8), (c) and (d) are revised, new paragraphs (a)(5), (b)(9), (b)(10), (e), (f), and (g) are added to read as follows:

**§ 17.173 Applications with respect to projects.**

(a) A State desiring to receive Federal assistance for construction or acquisition of a State home facility shall submit to the Administrator a preapplication (if the need for Federal funding exceeds $100,000) and an application for such assistance in compliance with the uniform requirements for grant-in-aid to State and local governments prescribed in the Office of Management and Budget Circular No. A–102, Revised. The applicant will submit as part of the application or as an attachment thereto:

(1) The amount of the grant requested with respect to such project which may not exceed 65 percent of the estimated cost of construction or acquisition and construction of such project.

* * * * *

(4) Any comments or recommendations made by appropriate State (and areawide) clearinghouses pursuant to policies outlined in Executive Order 12372, Intergovernmental Review of Federal Programs (Part 40 of this title).

(5) If construction outside the walls of an existing structure will involve more than 75,000 net square feet (NSF), the application shall include an environmental assessment to determine if an Environmental Impact Statement is necessary for compliance with section 102(2)(c) of the National Environmental Policy Act of 1969. The Environmental Assessment shall briefly describe the possible beneficial and/or harmful effects which the project may have on the following impact categories: (i) Transportation, (ii) air quality, (iii) noise, (iv) solid waste, (v) utilities, (vi) geology, (soils/hydrology/flood plains), (vii) water quality, (viii) land use, (ix) vegetation, wildlife, aquatic, ecology/wetlands, (x) economic activities, (xi) cultural resources, (xii) aesthetics, (xiii) residential population, (xiv) community services and facilities, (xv) community plans and projects, and (xvi) other. If an adverse environmental impact is anticipated, then the action taken to minimize the impact should be explained in the environmental assessment.

(b) * * *

(5) The rates of pay for laborers and mechanics engaged in construction of the project will not be less than the prevailing local wage rates for similar work as determined in accordance with the Act of March 3, 1931 (40 U.S.C. 276a through 276a–5) known as the Davis-Bacon Act. (38 U.S.C. 5035(a)(8))

* * * * *

(8) The structures constructed will be of fire, earthquake, and other natural disaster resistant construction. (38 U.S.C. 5005)

(9) In the case of a project for acquisition of a facility, the State agency must provide reasonable assurance that the total cost of acquisition of the facility, including any expansion, remodeling and alteration to meet all building requirements and codes, and for all other purposes, shall not be greater than the estimated cost of

construction of an equivalent new State home facility. (38 U.S.C. 5035(a)(9))

(10) An audit will be performed in compliance with the Single Audit Act of 1984 (See Part 41 of this title). (31 U.S.C. 7501–7507)

(c) Upon receipt of an application for a grant for a project for construction or acquisition of a State veterans home, the Administrator or designee shall:

(1) Determine whether the application meets the requirements of 38 U.S.C. 5035 and §§ 17.170 through 17.177 and Appendix A to § 17.171 of this title and whether the application contains sufficient information for the Administrator to establish its priority. The administrator shall:

(i) Consider the following factors when making a determination for purposes of this section that a project is primarily a State veterans nursing home, domiciliary or hospital project:

(A) The number of State veterans nursing home, domiciliary, and/or hospital beds that would be constructed or acquired by the project;

(B) The amount of nursing home, domiciliary, or hospital project space that will result from the construction or acquisition project;

(C) The estimated number of veteran patients who would benefit from the construction or acquisition project. (38 U.S.C. 5035(b))

(2) Notify the State submitting the application whether the application conforms which such requirements, and, if it does not, notify the State

(i) Of the actions necessary to bring the application into conformance with those requirements; and

(ii) If the application provides insufficient information for the Administrator to establish its priority under paragraph (c)(1) of this section and

(iii) (If such application provides sufficient information for the Administrator to establish its priority) determine the priority of the project described in the application in relation to all other projects in accordance with the criteria set forth in this paragraph. The priority of any project is subject to change upon receipt of information concerning that or any other project. In establishing a project's priority, the Administrator shall rank projects from the highest to lower priority in the order of priority groups set forth in this paragraph, giving the projects in Group 1 the highest priority and the projects in Group 6 the lowest. Except as otherwise provided, where more than one project is ranked in a single priority group, the Administrator shall rank those projects by applying the criteria applicable to the next lower priority group. Where such ranking results in more than one project being given the same priority, the Administrator shall rank those projects, except as otherwise provided, in accordance with the criteria applicable to the next lower priority group until all projects are ranked with a different priority.

The priority groups are:

(A) *Priority Group 1:* A State veterans nursing home or domiciliary project for which a State, in the judgment of the Administrator, has made sufficient funds available for construction and/or acquisition so that the project may proceed upon approval of the grant which the State has requested without further action required by the State to make such funds available for that purpose, shall be accorded first priority. A State's enactment into law of a bill appropriating the State's (matching) funds for the project will be accepted by the Administrator as demonstrating that the State has made sufficient funds available for construction and/or acquisition of the project.

(B) *Priority Group 2:* A State veterans nursing home or domiciliary project from a State which has not received a construction or acquisition grant from the Administrator under 38 U.S.C. 5035 shall be accorded second priority.

(C) *Priority Group 3:* A State veterans nursing home or domiciliary bed producing or non-bed producing project from a State, which the Administrator determines, pursuant to this paragraph, to have a greater need for State veterans nursing home or domiciliary beds than other States which have submitted applications, shall be accorded third priority. The Administrator shall base such determinations on the Administrator's calculation, pursuant to this paragraph, of the State's unmet need for such beds. A State which has submitted an application for a project which the Administrator determines to be primarily a nursing home project will be deemed to have a greater need for State veterans nursing home beds than other States if the Administrator determines that the State has an unmet need for such beds of between 91 percent and 100 percent. The Administrator shall determine a State's unmet need for State veterans nursing home beds by dividing the number of that State's nursing home beds authorized by the Veterans Administration in State Veterans Homes as of June 15 of the current year by the number of beds needed to provide adequate nursing home care to veterans residing in that State as prescribed by the Administrator in Appendix A. The quotient, expressed as a percentage, will be subtracted from 100 percent. The difference constitutes the State's unmet need for State veterans nursing home beds for purposes of this section. The Administrator shall determine a State's unmet need for domiciliary beds by dividing the number of that State's domiciliary beds authorized by the Veterans Administration as of June 15 of the currrent year by the number of beds needed to provide adequate domiciliary care to veterans residing in that State prescribed by the Administrator in Appendix A. The quotient, expressed as a percentage will be subtracted from 100 percent. The difference constitutes the State's unmet need for State veterans domiciliary beds for purposes of this section.

(D) *Priority Group 4:* A State veterans nursing home or domiciliary project, which is not assigned a higher priority under this section, shall be accorded fourth priority. If there is more than one project in this priority group, the Administrator shall assign each project a value as set forth in the following table in accordance with the Administrator's determination of the type of project:

| Type of project | Value |
|---|---|
| Life-Safety Project for Nursing Home Facility | 10 |
| Project Resulting in the Construction or Acquisition of Nursing Home Beds | 10 |
| Life-Safety Project for Domiciliary Facility | 9 |
| Project Resulting in the Construction or Acquisition of Domiciliary Beds | 8 |
| Nursing Home Renovation Project | 6 |
| Domiciliary Renovation Project | 4 |

If the Administrator determines that a project could be included in two or more of the above-listed types so that the project, in the judgment of the Administrator, cannot be accurately characterized as to type by reference to any single type listed above, the Administrator shall determine the numerical value to be assigned a project by calculating the average of all the numerical values associated with all types of projects in which the project could be included. The Administrator shall rank projects in accordance with the numerical values assigned, with the highest priority being assigned to the project with the highest numerical valuation. Where this results in two or more projects with the same priority, these projects shall be ranked in the order in which the Administrator received the State's preapplication for that project giving highest priority to the project for which a preapplication was received first. If a preapplication was not received by the Administrator for a project, the project shall be ranked with other projects using the date on which

the Administrator received the application for the projects.

(E) *Priority Group 5:* A project which is primarily designed to renovate a State veterans hospital facility but which would not expand a State's capacity to furnish hospital care in a State veterans home shall be accorded fifty priority. Where more than one project is ranked in this priority group, the Administrator shall rank them in the order in which the Administrator received the State's preapplication for the project and shall give highest priority to the project for which a preapplication was received first. If a preapplication was not received by the Administrator for a project, the project shall be ranked with other projects using the date on which the Administrator received the application for the project.

(F) *Priority Group 6:* A hospital project which would expand a State's capacity to furnish hospital care in a State veterans home shall be accorded no priority. Where more than one such project has been submitted, the Administrator shall rank them in the order in which the Administrator received the State's preapplication for the projects and shall assign the lowest ranking to the project for which a preapplication was received last. If a preapplication was not received by the Administrator for a project, the project shall be ranked with other projects using the date on which the Administrator received the application for the project. (38 U.S.C. 5035(b))

(d) The Administrator shall establish as of July 1 of each year a list of projects in the order of their priority on June 15 of that year as determined pursuant to paragraph (c) of this section. To the extent that Federal funds are available, the Administrator shall award grants in the order of their priority on this list during the fiscal year beginning on October 1 of the calendar year in which the list is made. Once the list is established for the purpose of awarding construction grants, the Administrator shall not add projects or change the list in any way except to delete a project at the request of the State which has applied for grant assistance for that project or upon the award by the Administrator of a grant for a project on the list. (38 U.S.C. 5035(b)(4))

(e)(1) The Administrator shall defer approval of an application that otherwise meets the requirements of 38 U.S.C. 5035, if the State which submitted the application does not, by July 1 of the Federal fiscal year in which the State is notified by the Assistant Chief Medical Director for Geriatrics and Extended Care of the availability of Federal funding for a grant for the project described in the application, demonstrate that the State has provided adequate financial support (matching funds) for such project. A State's enactment into law of a bill appropriating the State's share of funding for the project is acceptable to demonstrate that the State has provided adequate financial support (matching funds) for the project. The Veterans Administration will evaluate other types of assurances on a case by case basis.

(2) The Administrator will apply Federal funds, which had been intended for an application which has been deferred pursuant to paragraph (e)(1) of this section to applications for State veterans nursing home or domiciliary projects that:

(i) Would not have been funded during the fiscal year but for the deferral,

(ii) Will meet the requirements of these regulations by the end of the Federal fiscal year, and

(iii) The Administrator has accorded the highest priority under paragraph (c) of this section.

(3) An application deferred in accordance with paragraph (e)(1) of this section shall be accorded priority in any subsequent Federal fiscal year ahead of applications that had not been approved before the first day of the Federal fiscal year in which the deferred application was first approved. (38 U.S.C. 5035(b)(5))

(f) The amount of a grant under these regulations shall be paid to the applicant or, if designated by the applicant, the State home for which such project is being developed or any other agency or instrumentality of the applicant. Funds paid for an approved project will be used solely for carrying out such project as so approved. (38 U.S.C. 5035(d)(1))

(g) Any amendment of any application whether or not approved under paragraph (d) of this section will be subject to review and approval pursuant to the regulations concerning grants to States for construction of State home facilities in the same manner as an original application. (38 U.S.C. 5035(e))

* * * * *

7. Section 17.174 is revised to read as follows:

**§17.174 Disallowance of a grant application and notice of a right to hearing.**

(a) Before disapproving an application submitted under § 17.173, the Administrator shall notify the applicant of the opportunity for a hearing. The notice shall state:

(1) That the application's disapproval has been proposed;

(2) The basis for the proposed disapproval;

(3) That a request for a hearing should be received in writing by the Administrator within 40 days from the date of this notice;

(4) That failure of an applicant to request a hearing as provided for by this section or to appear at a hearing for which a date has been set shall be deemed a waiver of the opportunity for a hearing.

(b) If an applicant requests a hearing after the expiration of the 40-day period, the Administrator may accept the request.

(c) An applicant who requests a hearing under the procedures specified by this section shall be notified of the time and place for the hearing. If the time or place set is inconvenient for the applicant, the Administrator may change the time or place for the hearing.

(d) The Administrator shall conduct the hearing. The hearing will be informal. The rules of evidence will not be followed. Witnesses shall testify under oath or affirmation. A record or transcript of the hearing shall be made. The Administrator who conducts the hearing may exclude from consideration irrelevant, immaterial, or unduly repetitious evidence or testimony. (38 U.S.C. 5035(c))

8. Section 17.175 is revised to read as follows:

**§ 17.175 Recapture provisions.**

(a) Except as provided in paragraph (b) of this section, if within 20 years after completion of any project with respect to which a grant has been made under the regulations concerning grants to States for construction or acquisition of State home facilities, a facility constructed or acquired as part of such project ceases to be operated by a State, a State home, or an agency or instrumentality of a State principally for furnishing domiciliary, nursing home or hospital care to veterans, the United States shall be entitled to recover from the State which was the recipient of the grant or from the then owner of such construction 65 percent of the current value of such facility (but in no event and amount greater than the amount of assistance provide for such under these regulations), as determined by agreement of the parties or by action brought in the district court of the United States for the district in which the facility is situated. (38 U.S.C. 5036)

(b) In the case of a grant where the Veterans Administration would provide between 50 and 65 percent of the estimated cost of expansion, remodeling, or alteration of an existing State Home facility recognized by the Veterans Administration in accordance with

§ 17.165, the Administrator may at the time of the grant provide for the following recovery periods associated with the following grant amounts.

| Grant Amount (dollars in thousands) | Recovery period (in years) |
|---|---|
| 0-250 | 7 |
| 251-500 | 8 |
| 501-750 | 9 |
| 751-1,000 | 10 |
| 1,001-1,250 | 11 |
| 1,251-1,500 | 12 |
| 1,501-1,750 | 13 |
| 1,751-2,000 | 14 |
| 2,001-2,250 | 15 |
| 2,251-2,500 | 16 |
| 2,501-2,750 | 17 |
| 2,751-3,000 | 18 |
| Over-3,000 | 20 |

(38 U.S.C. 5036)

If the magnitude of the Veterans Administration's contribution is below 50 percent of the estimated cost of the expansion, remodeling, or alteration of an existing State home facility recognized by the Veterans Administration in accordance with § 17.165, the Administrator may authorize a recovery period between 7 and 20 years depending on the grant amount involved and the magnitude of the project.

9. Section 17.176 is revised to read as follows:

**§ 17.176 State to retain control of operations.**

Neither the Administrator of Veterans Affairs nor any employee of the Veterans Administration shall exercise any supervision or control over the administration, personnel, maintenance, or operation of any State home constructed or acquired with assistance received under the regulations concerning grants to States for construction and acquisition of State home facilities except as prescribed in these regulations and § 17.167. (38 U.S.C. 5037)

**§ 17.177 [Amended]**

10. In § 17.177, paragraph (a)(4)(iii) is removed.

11. Appendix A is revised to read as follows:

**Appendix A (See § 17.171)—State Home Facilities for Furnishing Nursing Home Care**

The maximum number of beds to provide adequate nursing home care and domiciliary care to veterans residing in each State not to exceed four beds per 1,000 veteran population for nursing home care and two beds per 1,000 veteran population for domiciliary care is established as follows:

| State | Veteran population[1] | No. of beds: NHC | No. of beds: Dom |
|---|---|---|---|
| Alabama | 436,000 | 1,744 | 872 |
| Alaska | 50,000 | 200 | 100 |
| Arizona | 383,000 | 1,532 | 766 |
| Arkansas | 270,000 | 1,080 | 540 |
| California | 3,003,000 | 12,012 | 6,006 |
| Colorado | 401,000 | 1,604 | 802 |
| Connecticut | 413,000 | 1,652 | 826 |
| Delaware | 77,000 | 308 | 154 |
| District of Columbia | 65,000 | 260 | 130 |
| Florida | 1,392,000 | 5,568 | 2,784 |
| Georgia | 632,00 | 2,528 | 1,264 |
| Hawaii | 99,000 | 396 | 198 |
| Idaho | 121,00 | 484 | 242 |
| Illinois | 1,348,000 | 5,392 | 2,696 |
| Indiana | 680,000 | 2,720 | 1,360 |
| Iowa | 354,000 | 1,416 | 708 |
| Kansas | 300,000 | 1,200 | 600 |
| Kentucky | 405,000 | 1,620 | 810 |
| Louisiana | 453,000 | 1,812 | 906 |
| Maine | 154,000 | 616 | 308 |
| Maryland | 544,000 | 2,176 | 1,088 |
| Massachusetts | 720,000 | 2,880 | 1,440 |
| Michigan | 1,117,000 | 4,468 | 2,234 |
| Minnesota | 525,000 | 2,100 | 1,050 |
| Mississippi | 245,000 | 980 | 490 |
| Missouri | 647,000 | 2,588 | 1,294 |
| Montana | 108,000 | 432 | 216 |
| Nebraska | 191,000 | 764 | 382 |
| Nevada | 137,000 | 548 | 274 |
| New Hampshire | 138,000 | 552 | 276 |
| New Jersey | 925,000 | 3,700 | 1,850 |
| New Mexico | 162,000 | 648 | 324 |
| New York | 1,951,000 | 7,804 | 3,902 |
| North Carolina | 660,000 | 2,640 | 1,320 |
| North Dakota | 69,000 | 276 | 138 |
| Ohio | 1,385,000 | 5,540 | 2,770 |
| Oklahoma | 397,000 | 1,588 | 794 |
| Oregon | 400,000 | 1,600 | 800 |
| Pennsylvania | 1,593,000 | 6,372 | 3,186 |
| Rhode Island | 126,000 | 504 | 252 |
| South Carolina | 351,000 | 1,404 | 702 |
| South Dakota | 80,000 | 320 | 160 |
| Tennessee | 543,000 | 2,172 | 1,086 |
| Texas | 1,732,000 | 6,928 | 3,464 |
| Utah | 155,000 | 620 | 310 |
| Vermont | 64,000 | 256 | 128 |
| Virginia | 664,000 | 2,656 | 1,328 |
| Washington | 628,000 | 2,512 | 1,256 |
| West Virginia | 243,000 | 972 | 486 |
| Wisconsin | 574,000 | 2,296 | 1,148 |
| Wyoming | 67,000 | 268 | 134 |

[1] Estimate as of March 31, 1983.

*Source:* Office of Reports and Statistics, VA. (Based on last available Bureau of the Census data.) (January 1984)

[FR Doc. 87-7556 Filed 4-3-87; 8:45 am]

BILLING CODE 8320-01-M

## FEDERAL MARITIME COMMISSION

**46 CFR Part 502**

**[Docket No. 87-1]**

## Automobile Measurement Rule; Finding of No Significant Impact

**AGENCY:** Federal Maritime Commission.

**ACTION:** Availability of finding of no significant impact.

**SUMMARY:** The Commission has completed an environmental assessment of a proposed rule in Docket No. 87-1 and found that its resolution of this proceeding will not have a significant impact on the quality of the human environment.

**DATES:** Petitions for review are due on or before April 16, 1987.

**ADDRESS:** Petitions for review (Original and 15 copies) to: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573.

**FOR FURTHER INFORMATION CONTACT:** Edward R. Meyer, Office of Special Studies, 1100 L Street NW., Washington, DC 20573.

**SUPPLEMENTARY INFORMATION:** Upon completion of an environmental assessment, the Federal Maritime Commission's Office of Special Studies has determined that the Commission's proposed rule in Docket No. 87-1 (52 FR 4040, February 9, 1987) will not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, and that preparation of an environmental impact statement is not required.

In Docket No. 87-1 the Commission proposes to amend its rules pertaining to the publishing, filing and posting of tariffs in domestic offshore commerce to permit the rating of automobiles on other than a weight or cube measure basis.

This Finding of No Significant Impact (FONSI) will become final within 10 days of publication of this notice in the **Federal Register** unless a petition for review is filed pursuant to 46 CFR 504.6(b).

The FONSI and related environmental assessment are available for inspection on request from the Office of the Secretary, Room 11101, Federal Maritime Commission, Washington, DC 20573, telephone (202) 523-5725.

By the Commission.

**Joseph C. Polking,**

*Secretary.*

[FR Doc. 87-7552 Filed 4-3-87; 8:45 am]

BILLING CODE 6730-01-M

## GENERAL SERVICES ADMINISTRATION

### 48 CFR Part 509

**[GSAR Notice No. 5-169]**

### General Services Administration Acquisition Regulation; Suspension and Debarment

**AGENCY:** Office of Acquisition Policy, GSA.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice invites written comments on a proposed change to the General Services Administration Acquisition Regulation (GSAR), which would revise § 509.403 to change titles to conform to current organizational titles, revise § 509.404 to delete the reference to the Automated Consolidated List and revise § 509.405 to add text to provide guidance concerning treatment to be accorded solicitation requests by suspended or debarred contractors and bids and proposals received from such contractors. The intended effect is to improve the regulatory coverage and to provide uniform procedures for contracting under the regulatory system.

**DATE:** Requests for a copy of the proposal and comments should be addressed to Ms. Marjorie Ashby, Office of GSA Acquisition Policy and Regulations, 18th and F Streets, NW. Room 4026, Washington, DC 20405 (202) 523-3822.

**FOR FURTHER INFORMATION CONTACT:** Mr. Edward Loeb, Office of GSA Acquisition Policy and Regulations, 18th and F Streets, NW., Room 4024, Washington, DC 20405 (202) 535-7791.

**SUPPLEMENTARY INFORMATION:** The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain procurement regulations from Executive Order 12291. The exemption applies to this proposed rule. The GSA certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The proposed rule will provide guidance to GSA contracting activities on treatment to be accorded solicitation requests by suspended or debarred contractors and bids and proposals received from such contractors. The rule does not contain information collection requirements which require the approval of OMB under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

**List of Subjects in 48 CFR Part 509**

Government procurement.

Dated: March 27, 1987.

**Ida M. Ustad,**

*Director, Office of GSA Acquisition, Policy and Regulations.*

[FR Doc. 87-7465 Filed 4-3-87; 8:45 am]

BILLING CODE 6820-61-M

## INTERSTATE COMMERCE COMMISSION

### 49 CFR Part 1312

**[No. 37321 (Sub-No. 1)]**

### Revision of Tariff Regulations; Computer Determination of Mileages

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Commission proposes to amend 49 CFR Part 1312 to allow all motor common carriers to file electronic distance determination systems in lieu of printed distance guides. Our present rule requires that distance guides must contain maps and/or comprehensive tables of distances between points. The proposed rule revision would allow for the filing of guides which refer tariff users to computer programs that provide exact distances to be used in connection with carriers' tariffs of mileage rates. The proposed revision should insure that all tariff users will have the right to access or retrieve information as filed, thus satisfying the requirements of 49 U.S.C. 10761 and 10762. We invite comments of interested parties on our proposal. We also invite parties to furnish us with additional proposals for "other than paper" filing of required tariff matter. These proposals will be considered in this or further rulemaking proceedings.

**DATE:** Comments are due May 6, 1987.

**ADDRESS:** The original and, if possible, 15 copies of comments referring to Docket No. 37321 (Sub-No. 1), should be addressed to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

**FOR FURTHER INFORMATION CONTACT:** Lawrence Herzig, (202) 257-6887.

**SUPPLEMENTARY INFORMATION:** The commission's decision contains additional information. To obtain a copy, contact Office of the Secretary, Room 2215, Interstate Commerce Commission, 12th Street and Constitution Avenue NW., Washington, DC 20423, or call (202) 275-7428.

**Environmental and Energy Considerations**

We preliminarily conclude that the proposed action will not significantly affect either the quality of the human environment or the conservation of energy resources.

**Initial Regulatory Flexibility Analysis**

We preliminarily conclude that the proposed rule revision will not, if adopted, have a significant economic impact on a substantial number of small entities. The proposed action is permissive in nature and, thus, will affect only those entities which choose to utilize or develop automated distance determination systems. Voluntary filings under the proposed rule would not entail imposed additional record keeping or other administrative burdens.

**List of Subjects in 49 CFR Part 1312**

Motor carriers.

Decided: March 27, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons.

**Noreta R. McGee,**

*Secretary.*

Title 49 of the Code of Federal Regulations is proposed to be amended as follows:

## PART 1312—REGULATIONS FOR THE PUBLICATION, POSTING AND FILING OF TARIFFS, SCHEDULES AND RELATED DOCUMENTS

1. The authority citation for 49 CFR Part 1312 is revised to read as follows:

**Authority:** 49 U.S.C. 10321 and 10762, 5 U.S.C. 553.

2. Section 1312.30 is amended by revising paragraph (c)(5) to read as follows:

**§ 1312.30 Distance rates.**

* * * * *

(c) * * *

(5) Distance guides shall provide distance tables or combinations of tables and maps. Tables shall provide specific distances between a substantial number of the points and be shown as having precedence over the distances determined by the use of maps. Each guide, shall provide rules stating its application. The rules shall include a means for determining distances between all locations within the territorial coverage of the guide.

regardless of whether all the locations are shown in the guide or whether distances are shown between all locations. If distances between certain points or areas are to be determined only through a certain gateway or interchange point, those points or areas and the gateway or interchange point shall be identified. Distance guides may exceed the maximum size limitations imposed by § 1312.3 but may not exceed 14½ by 17½ inches in size. Motor common carriers may file automated distance determination systems which are linked by reference in abbreviated distance guides to computer stored information provided the following conditions are met:

(i) Carriers or their tariff publishing agents shall make arrangements with the Commission for the receipt, storage and use of the systems through existing Commission technology and facilities.

(ii) In the event that a system is not compatible with Commission technology, the necessary implementing equipment and programs shall be placed on file with the Commission for use by Commission personnel and the public at no cost.

(iii) Changes in the systems shall be given notice, as required by 49 U.S.C. 10762(c)(1) and § 1312.4(e), through printed tariff amendments to the distance guides. The amendments shall show the currently effective provisions and how the provisions will be changed or amended.

(iv) The distance guides shall provide all the information necessary to access and utilize the systems.

* * * * *

[FR Doc. 87-7498 Filed 4-3-87; 8:45 am]
BILLING CODE 7035-01-M

# Notices

Federal Register
Vol. 52, No. 65
Monday, April 6, 1987

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## AGENCY FOR INTERNATIONAL DEVELOPMENT

### Meeting; Research Advisory Committee

Pursuant to the provisions of the Federal Advisory Committee Act, notice is hereby given of the A.I.D. Research Advisory Committee meeting on May 7 and 8, 1986 at the Pan American Health Organization Building, 525 23rd Street, NW., Washington, DC, Conference Room 'C'. The Committee will discuss agriculture research policies in the Science and Technology Bureau on May 7, and health research policies on May 8.

The meeting will begin each day at 9:00 a.m. and will adjourn at 5:30 p.m. on May 7 and 12:00 p.m. on May 8. The meeting is open to the public. Any interested persons may attend, may file written statements with the Committee before or after the meeting, or may present oral statements in accordance with procedures established by the Committee and to the extent the time available for the meeting permits. Dr. Curtis Jackson, Director, Office of Research and University Relations, Bureau for Science and Technology, is designated as the A.I.D. representative at the meeting. It is suggested that those desiring more specific information contact Dr. Jackson, 1601 N. Kent Street, Arlington, Virginia 22209 or call area code (703) 235–8929.

Dated: March 27, 1987.

**Curtis Jackson,**

*A.I.D. Representative, Research Advisory Committee.*

[FR Doc. 87–7467 Filed 4–3–87; 8:45 am]

BILLING CODE 6116–01–M

## DEPARTMENT OF AGRICULTURE

### Office of the Secretary

### Reestablishment of the Agribusiness Promotion Council

Notice is hereby given that the Agribusiness Promotion Council will be reestablished for a two-year term.

The purpose of the Council is to assist the Department of Agriculture (USDA) in carrying out the agricultural development aspects of the Caribbean Basin Economic Recovery Act. The objective of the Council is to increase the level of new U.S. agro-industrial investment in the countries of the Caribbean Basin. This Council will serve an essential function.

Reestablishment of this Council is in the public interest in connection with the performance of the duties and responsibilities of USDA.

Written statements may be submitted to Joan S. Wallace, Administrator, USDA/OICD, Washington, DC 20250–4300, until April 21, 1987. Additional information may be obtained by contacting Joan S. Wallace, Administrator, USDA/OICD, Washington, DC 20250–4300, telephone (202) 653–9309.

March 30, 1987.

**John J. Franke, Jr.,**

*Assistant Secretary for Administration.*

[FR Doc. 87–7557 Filed 4–3–87; 8:45 am]

BILLING CODE 3410–43–M

### Commodity Credit Corporation

### Foreign Agricultural Service

### Targeted Export Assistance Program, Fiscal Year 1987

**AGENCY:** Commodity Credit Corporation and Foreign Agricultural Service, USDA.

**ACTION:** Notice.

**SUMMARY:** This notice announces the conduct of the Targeted Export Assistance Program for fiscal year 1987.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth H. Callanan, Chief Marketing Programs Staff, Commodity and Marketing Programs, Foreign Agriculture Service, U.S. Department of Agriculture, Washington, DC 20250–1000, Telephone: (202) 447–5521.

#### Targeted Export Assistance Program

Section 1124 of the Food Security Act of 1985, as amended, 7 U.S.C. 1736s, (the Act) provides that, for fiscal years 1986 through 1990, the Secretary of Agriculture shall use a specified amount of funds of, or commodities owned by, the Commodity Credit Corporation (CCC) to counter or offset the adverse effect on the export of a United States agricultural commodity, or the product thereof, of a subsidy, import quotas, or other unfair trade practices of a foreign country. Such funds or commodities must be used for export activities authorized to be carried out by the Secretary of Agriculture or CCC.

For each of the fiscal years 1986 through 1988 the minimum amount of funds or value of commodities required to be used is not less than $110,000,000 and for each of the fiscal years 1989 and 1990 the minimum increases to $325,000,000.

Section 1124 of the Act requires the Secretary to provide export assistance on a priority basis in the case of agricultural commodities and products thereof with respect to which there has been a favorable decision under section 301 of the Trade Act of 1974, or for which exports have been adversely affected, as defined by the Secretary, by retaliatory actions related to a favorable decision under section 301 of the Trade Act of 1974.

For fiscal year 1987, the Board of Directors, CCC, and the Secretary of Agriculture approved the use of commodities owned by CCC valued at $110,000,000 to support foreign market development projects to counter or offset the adverse effect of a subsidy, import quotas, or other unfair trade practices of a foreign country on the export of United States agricultural commodities, or products thereof.

The Targeted Export Assistance Program (Program) will be conducted through project agreements entered into by CCC with trade associations, regional state sponsored organizations or individual firms in the United States. These projects agreements will provide for the support of promotional activities for specific agricultural commodities and products thereof through the issuance by CCC of commodity

certificates to reimburse participants for activities authorized by the specified project agreement. Agreements are signed and administered by the Administrator, Foreign Agricultural Service (FAS), who is Vice President, CCC.

It has been determined that, for fiscal year 1987, the commodities which meet the conditions of priority assistance referred to in section 1124 of the Act are: Pasta, poultry, wheat flour, walnuts, raisins, citrus, and canned fruit. CCC will enter into agreements to provide export assistance for other commodities or products thereof only after it is determined that adequate assistance will be available to promote the export of commodities which meet the conditions for priority assistance. All commodities for which targeted export assistance is provided must be in adequate supply to meet anticipated domestic need, and preference will be given to products whooly of U.S. origin. Only products composed of more than 50 percent U.S. commodities, computed on either a value or volume basis, will be eligible. Assistance will only be provided to industries that are able to provide an adequate stable supply of the particular commodity to targeted countries.

Promotional activities will be undertaken only in those countries which (1) maintain trade practices which unfairly discriminate against U.S. agricultural commodities, (2) represents markets in which the export of U.S. agricultural commodities are adversely affected by subsidies or other unfair trade practices of other exporting countries, or (3) offer a reasonable possibility for increased exports to counter or offset such practices.

Persons desiring to participate in the program must be able to provide substantial cost sharing for export promotions activities, adequate administrative support and commitment to promotional activities. Project agreements will provide for adequate controls and review, similar to those of present FAS market development programs, including the approval of an annual marketing plan, review of progress, and conduct of compliance audits.

**Thomas O. Kay,**

*Administrator, Foreign Agricultural Service and Vice President, Commodity Credit Corporation.*

[FR Doc. 87-7500 Filed 4-3-87; 8:45 am]

BILLING CODE 3410-10-M

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[Docket No. OEE-1-87.01 II; OEE-1-87.02 II]**

### Actions Affecting Export Privileges

#### Summary

In the matter of: Valley Machine Tool and Anthony Speno: Respondents.

The renewal of the Temporary Denial Order against the Appellants Valley Machine Tool, with an address at 858 Civic Center Drive, Santa Clara, California 95050 and Anthony Speno, 650 Spring Street, Santa Cruz, California 95060, imposed on March 6, 1987 is vacated.

#### Facts

This is an appeal from the renewal of a temporary denial order imposed on Appellants Valley Machine Tool and Anthony Speno (hereinafter collectively referred to as Appellants) dated March 6, 1987 (52 FR 7636, March 12, 1987). The original *ex parte* denial order was issued on January 5, 1987. A Petition to Vacate that order was filed on behalf of Appellants on February 20, 1987. The petition was dismissed on March 9, 1987, because the order appealed from had expired while the appeal was pending. The submissions made in the initial appeal were considered by the Administrative Law Judge (ALJ) along with other filings made in the second petition to vacate. In his Recommended Decision, dated March 23, 1987, the ALJ concluded that Department counsel had failed to show that an imminent violation of the Export Administration Act was likely in that the evidence of record did not support the conclusion that the Aye-Zed Model 1100 Surface Enhancement Machines constituted controlled U.S.-origin disc manufacturing equipment. Accordingly, he recommends that the Temporary Denial Order be vacated.

#### Issue

Whether the record contains an adequate basis to sustain the extraordinary temporary denial order.

#### Discussion and Findings

The Appellants contend that the principal piece of machinery involved, the used and refurbished Aye-Zed Model 1100 Surface Enhancer, is not a controlled commodity and that it, as well as the technical information respecting it, fit within commodity classification number (CCN) 6099G. Appellants base this on, *inter alia*, a commodity classification determination made by the Department on February 10, 1987. While conceding the original classification, Agency counsel contends that the subject machine was properly reclassified under CCN 1358A on March 2, 1987 and that it, and the technical data respecting its use, are subject to controls which require a validated export license before shipment to Bulgaria. For the purposes of TDO proceedings, governed as they are by short, mandatory time limits for decisions, it must be assumed that the commodity, is controlled.

This fact alone, however, does not constitute a sufficient basis for sustaining the TDO. Recognizing this, the Department further alleges that the fact that Appellants have entered into two contracts for the future export to Bulgaria, of the same machines and technical data which have previously been shipped to the same proscribed destination and about which the CCN controversy exists. However, the mere existence of a contract is not enough to show threat of imminent violation, especially when past shipments may have been made under a justifiable assumption that the product did not require a license for shipment. Indeed, the manner in which the control system is administered almost assures that contracts will predate license applications. To deny an exporter all export privileges, even temporarily, in such a case is unreasonable. However, Appellants are on notice that the Department considers the Aye-Zed Model 1100 Surface Enhancer and supporting technical data properly classified under ECCN 1358A. Should Appellants export the commodities at issue here without either first obtaining a validated export license or appealing the commodity classification, they would do so at their own peril.

In his submission of March 27, 1987, the appellants' counsel contends that the ALJ has authority to review commodity classifications. This is true only in part and does not apply to the TDO process. In the normal course, the Regulations, section 389, provide that appeals of commodity classifications are made directly to the Assistant Secretary. This is not to say, however, that the ALJ is never involved in commodity classification issues since, clearly, one issue to be addressed in any compliance action is whether the violation claimed has occurred with respect to a controlled commodity. The issue of whether the commodity is controlled is addressed as part of the Department's case. However, the TDO appeal process, with its limited time frames for submissions, hearings, and decisions, is neither an adequate nor the proper

forum in which a commodity classification contest should be decided. The reasonable course available to the Appellants at present is to appeal directly to the Assistant Secretary the reclassification notice of March 2, 1987.

*Therefore, it is ordered, That the Temporary Denial Order issued against Valley Machine Tool and Anthony Speno on March 6, 1987 is hereby vacated.*

Dated: March 30, 1987.

**Paul Freedenberg,**

*Assistant Secretary for Trade Administration.*

[FR Doc. 87-7493 Filed 4-3-87; 8:45 am]

BILLING CODE 3510-DT-M

## Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

**AGENCY:** International Trade Administration, Import Administration, Commerce.

**ACTION:** Notice of opportunity to request administrative review of antidumping or countervailing duty order, finidng, or suspended investigation.

### Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party as defined in section 771(9) of the Tariff Act of 1930 may request, in accordance with § 353.53a or 355.10 of the Commerce Regulations, that the Department of Commerce ("the Department") conduct an adminstrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

### Opportunity To Request a Review

Not later than April 30, 1987, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in April, for the following periods:

| | Period |
|---|---|
| Antidumping duty proceeding | |
| Diamond Tips from the United Kingdom | 04/01/86-03/31/87 |
| Spun Acrylic Yarn from Italy | 04/01/86-03/31/87 |
| Spun Acrylic Yarn from Japan | 04/01/86-03/31/87 |
| Sugar and Syrups from Canada | 04/01/86-03/31/87 |
| Sorbitol from France | 04/01/86-03/31/87 |
| Roller Chain (other than bicycle) from Japan | 04/01/86-03/31/87 |
| Bicycle Tires and Tubes from South Korea | 04/01/86-03/31/87 |
| Calcium Hypochlorite from Japan | 04/01/86-03/31/87 |
| Steeling Reinforcing Bars from Canada | 04/01/86-03/31/87 |
| Cyanuric Acid from Japan | 04/01/86-03/31/87 |
| Dichloroisocyanurates from Japan | 04/01/86-03/31/87 |
| Trichloroisocyanuric Acid from Japan | 04/01/86-03/31/87 |
| Color Television Receivers from South Korea | 04/01/86-03/31/87 |
| Color Television Receivers from Taiwan | 04/01/86-03/31/87 |
| Countervailing duty proceeding | |
| Pig Iron from Brazil | 01/01/86-12/31/86 |
| Wool from Argentina | 01/01/86-12/31/86 |
| Carbon Steel Wire Rod from New Zealand | 12/23/85-12/31/86 |
| Leather Wearing Apparel from Mexico | 01/01/86-12/31/86 |
| Rice from Thailand | 01/17/86-12/31/86 |
| Cold Rolled Steel Sheet from Argentina | 01/01/86-12/31/86 |
| Leather Wearing Apparel from Colombia | 01/01/86-12/31/86 |

A request must conform to the Department's interim final rule published in the **Federal Register** (50 FR 32556) on August 13, 1985.

Seven copies of the request should be submitted to the Deputy Assistant Secretary for Import Administration, International Trade Administration, Room B-099, U.S. Department of Commerce, Washington, DC 20230.

The Department will publish in the **Federal Register** a notice of "Initiation of Antidumping (Countervailing) Duty Administrative Review," for requests received by April 30, 1987.

If the Department does not recieve by April 30, 1987 a request for review of entries covered by an order or finding listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute but is published as a service to the international trading community.

Dated: March 26, 1987.

**Gilbert B. Kaplan,**

*Deputy Assistant Secretary for Import Administration.*

[FR Doc. 87-7544 Filed 4-3-87; 8:45 am]

BILLING CODE 3510-DS-M

## Export Trade Certificate of Review

**AGENCY:** International Trade Administration, Commerce.

**ACTION:** Notice of application.

**SUMMARY:** The Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, has received an application for an Export Trade Certificate of Review. This notice summarizes the conduct for which certification is sought and requests comments relevant to whether the certificate should be issued.

**FOR FURTHER INFORMATION CONTACT:** George Muller, Acting Director, Office of Export Trading Company Affairs, International Trade Administration, 202/377-5131. This is not a toll-free number.

**SUPPLEMENTARY INFORMATION:** Title III of the Export Trading Company Act of 1982 (Pub. L. 97-290) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A certificate of review protects its holder and the members identified in it from private treble damage actions and from civil and criminal liability under Federal and state antitrust laws for the export conduct specified in the certificate and carried out during its effective period in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

### Request for Public Comments

Interested parties may submit written comments relevant to the determination whether a certificate should be issued. An original and five (5) copies should be submitted not later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 5618, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as "Export Trade Certificate of Review, application number 87-00006." A summary of the application follows.

Applicant: Ira M. Ratner d/b/a United States Business & Industry Development Service (USBIDS), P.O. Box 141, Easton, Connecticut 06612, Telephone: (203) 371-8777

Application #: 87-00006

Date Deemed Submitted: March 23, 1987

Members (in addition to applicant):

None

*Summary of the Application:*

*Export Trade:*

*Products,* All products.

*Export Trade Facilitation Services (as they relate to the export of products).* Consulting.

**Export Markets**

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

**Export Trade Activities and Methods of Operation**

Ira M. Ratner d/b/a USBIDS is a sole proprietorship that seeks to facilitate U.S. exports. USBIDS intends to provide its clients with product-specific trade leads obtained through the Trade Opportunities Program of the U.S. Department of Commerce.

Dated: April 1, 1987.

**David M. Barton,**

*Acting Director, Office of Export Trading Company Affairs.*

[FR Doc. 87-7539 Filed 4-3-87; 8:45 am]

BILLING CODE 3510-DR-O

## National Oceanic and Atmospheric Administration

### Pelagic Fisheries of the Western Pacific Region; Receipt of Experimental Fishing Permit Application

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Notice of receipt of an experimental fishing permit application and request for comments.

**SUMMARY:** This notice acknowledges receipt of an application for a permit to harvest marlin, swordfish and sharks with a drift gill net in the exclusive economic zone off Hawaii. If granted, an experimental fishing permit would allow fishing that otherwise would be prohibited by Federal regulations implementing the Fishery Management Plan for the Pelagic Fisheries of the Western Pacific Region (FMP).

**DATE:** Comments on this application must be received by May 6, 1987.

**ADDRESS:** Send comments to E. Charles Fullerton, Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731.

**FOR FURTHER INFORMATION CONTACT:** Doyle E. Gates, Administrator, Western Pacific Program Office; 808-955-8831.

**SUPPLEMENTARY INFORMATION:** Final regulations implementing the FMP were published in the **Federal Register** on February 27, 1987 (52 FR 5983) and were effective on March 23, 1987. The regulations at 50 CFR Part 685 specify that experimental fishing permits may be issued to authorize fishing that otherwise would be prohibited. The procedures for issuing permits are contained in the regulations at § 685.8. An application for a permit was received on March 5, 1987. The application has been accepted for review and copies have been forwarded to the Western Pacific Regional Fishery Management Council (Council), the U.S. Coast Guard, and the State of Hawaii's Department of Aquatic Resources for comment. The application will be discussed at the next Council meeting to be announced at a later date. The applicant has proposed that he be allowed to fish 100 to 400 miles east and south of Hawaii using approximately 1000 fathoms of 24 inch mesh net, 120 meshes deep. Fishing would occur for about 10 months. Advice on whether to approve or deny the application, and advice on what conditions should be imposed if the permit is granted, is being sought from the Council, its advisors, State and Federal agencies and the general public.

There has been virtually no history on the use of drift gill nets by domestic fishermen in Hawaii to catch pelagic species. A permit system to control the use of gill nets was included in the FMP by the Council to determine the fishing method's potential effects on navigation due to discarded gear, possible hazards to sea turtles and marine mammals due to the nonselective nature of the gear, and the effects on existing fisheries resulting from the possibility of introducing lower quality fish to local markets.

(16 U.S.C. 1801 *et seq.*)

Dated: April 1, 1987.

**Richard B. Roe,**

*Director, Office of Fisheries Management, National Marine Fisheries Service.*

[FR Doc. 87-7545 Filed 4-3-87; 8:45 am]

BILLING CODE 3510-22-M

### Permits; Pacific Coast Groundfish Fishery

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Notice of receipt of an experimental fishing permit application and request for comments.

**SUMMARY:** This notice acknowledges receipt of an application for an experimental fishing permit (EFP) to harvest sablefish and other groundfish with set nets in the exclusive economic zone (EEZ) north of 38° N. latitude. If granted, this permit would allow fishing which otherwise would be prohibited by Federal regulations. This action is authorized by the Pacific Coast Groundfish Fishery Management Plan and implementing regulations.

**DATE:** Comments on this application must be received by April 10, 1987.

**ADDRESS:** Send comments to Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE, BIN C15700, Bldg. 1, Seattle, WA 98115.

**FOR FURTHER INFORMATION CONTACT:** Rolland A. Schmitten, 206-526-6150.

**SUPPLEMENTARY INFORMATION:** The Pacific Coast Groundfish Fishery Management Plan (FMP) and implementing regulations at 50 CFR Part 663 specify that experimental fishing permits (EFPs) may be issued to authorize fishing that would otherwise be prohibited by the FMP and regulations. The procedures for issuing EFPs are contained in the regulations at 50 CFR 663.10.

An EFP application to harvest groundfish using set nets in the EEZ off the coast of Washington and Oregon was received on March 20, 1987. Current groundfish regulations at 50 CFR 663.26(c) prohibit fishing for groundfish using set nets in the EEZ north of 38° N. latitude. The application was submitted by two U.S. fishermen who propose to conduct the experimental fishery with the fishing vessel ST. ANN.

The applicants propose an experimental fishery using set nets that will target on sablefish, *Anoplopoma fimbria*, with an incidental catch of lingcod and rockfish species. The proposed fishery is divided into two areas: 1) south of 47°30′ N. latitude from June 1 through December 31, 1987, and 2) north of 47°30′ N. latitude from May 15 through December 31, 1987, not to exceed thirty percent of available fishing time. The purpose of the experimental fishery south of 47°30′ N. latitude is to obtain information on the effectiveness of the gear, incidental catch of salmon and other non-target species, and gear conflicts. In the northern area where past experimental set net fisheries have occurred, the applicants' purpose is to evaluate the nature of the sablefish stock in the Nitinat Canyon area, whether local or migratory, and whether overfishing might have occurred. The applicants propose using a maximum of 1600 fathoms of net with five and one-half inch stretched mesh size or greater.

NMFS has issued EFPs for this purpose each year since implementation of the FMP in 1982 through 1985 in order to obtain data on set nets and their use in harvesting sablefish and other

incidentally-taken groundfish species, and determine whether such fishing gear can be authorized under the FMP without undue negative impact on the resource or on other fishermen. A total of twenty-four EFPs were issued; one EFP in 1982, three in 1983 and 1984, and seventeen in 1985. NMFS observers accompanied the EFP vessels on over thirty percent of their trips to monitor the experiment and collect information. Most of this experimental fishing with set nets occurred in a small area in the deeper waters off the coast of northern Washington (north of 47°30′ N. latitude). Sablefish was the target species although quantities of lingcod and rockfish were also landed. Totals of approximately 361, 572 and 704 metric tons of sablefish, lingcod, and rockfish were landed by EFP vessels in 1983, 1984, and 1985 respectively. The sablefish catch was 49 percent, 66 percent and 40 percent respectively of the landed catch in the three years. The incidental catch of salmon was negligible, as only five salmon were taken in over 500 of the sets observed in the three years. Further information on the past experimental set net fishery is included in annual reports on the fishery which are available from NMFS at the above **Address.**

In 1986, nine applications for EFPs to fish for groundfish with set nets in the area north of 47°30′ N. latitude were received. As a result of consultations with the directors of the State fishery management agencies and the Pacific Fishery Management Council (Council) and a thorough review of the observer data obtained from three years' experiments with set nets, NMFS decided to issue no EFPs to fish for groundfish with set nets in 1986. This decision was consistent with the recommendation of the Council and with the Council's reaffirmation of the provisions of the FMP and implementing regulations prohibiting use of set nets for groundfish north of 38° N. latitude.

The application will be discussed at the April 7–9, 1987, public meeting of the Pacific Fishery Management Council in Seattle, Washington. The decision to approve or deny issuance of an EFP will be based on a number of considerations including recommendations made by the Council and comments received from the public. A copy of the application is available for review at the NMFS, Northwest Regional Office, address above.

(16 U.S.C. 1801 *et seq.*)

Dated: April 1, 1987.

**Richard B. Roe,**

*Director, Office of Fisheries Management, National Marine Fisheries Service.*

[FR Doc. 87–7546 Filed 4–3–87; 8:45 am]

BILLING CODE 3510-22-M

## DEPARTMENT OF DEFENSE

### Department of the Army

### Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the committee: Army Science Board (ASB).

Dates of meeting: 21–22 April 1987.

Times of meeting: 1200–1600, 21 April 1987; 0800–1600, 22 April 1987.

Place: Crystal City, Arlington, VA.

Agenda: The Technology Subgroup of the Army Science Board 1987 Summer Study Panel on Lightening the Force will conduct its first meeting to accomplish the following: subgroup formation and task definition, discussion of industry and government issues on independent research and development, continuation of briefings by DARPA, and lessons learned from other Army programs such as M1 tank. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 1, subsection 10(d). The classified and nonclassified matters and proprietary information to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695–3039 or 695–7046.

**Sally A. Warner,**

*Administrative Officer, Army Science Board.*

[FR Doc. 87–7637 Filed 4–3–87; 8:45 am]

BILLING CODE 3710-08-M

### Corps of Engineers, Department of the Army

### Intent To Prepare a Draft Environmental Impact Statement for a Proposed Beach Erosion Control Project, Sea Bright to Ocean Township Reach, Monmouth County, NJ

**AGENCY:** U.S. Army Corps of Engineers, DOD.

**ACTION:** Notice of intent to prepare a draft environmental impact statement.

**SUMMARY:** 1. *Description of Proposed Action.* The proposed action provides for a beach berm, approximately 50 feet wide at 10 feet above mean low water for a 12-mile length of coast extending from Sea Bright southward to Ocean Township, New Jersey. Construction of 23 groins and extension of 14 existing groins in the project area are also authorized, as is maintenance of the project elements.

2. *Reasonable Alternatives.* In addition to the no action alternative, reasonable alternatives include: sand berm widths between 30 and 100 feet; alternative numbers of new and extended groins, up to 59 new groins and 65 extended groins; and combinations of the various project element alternatives.

3. *Scoping Process*—a. *Public Involvement.* Preliminary coordination has been conducted with Federal and State interests, and items of significant environmental concern have been identified. Additional views from public agencies and individuals will be solicited by means of public notice presenting a description of the proposed plan of improvement, and announcing the availability of a Draft Environmental Impact Statement.

b. *Significant Issues Requiring In-depth Analysis.* Water quality impacts, archaeological and cultural resources impacts, aquatic resource impacts, recreation impacts, and impacts on longshore sand transport.

c. *Assignments.* None anticipated.

d. *Environmental review and consultation.* Review will be as outlined in Council on Environmental Quality regulations dated November 29, 1983 (40 CFR Parts 1500–1508) and Corps regulations ER 200–2–2 dated August 25, 1980 (revised March 2, 1981).

4. Scoping Meeting will not be held.

5. Estimated date of statement availability—January 1988.

Address:

Project Manager, Joseph Vietri, ATTN: NANPL–FN, Tel. No. 212–264–9077

EIS Coordinator, Robert Dieterich, ATTN: NANPL–E, Tel. No. 212–264–4662

US Army Engineer District, New York, 26 Federal Plaza, New York, NY 10278–0090.

**Samuel P. Tosi, P.E.,**

*Chief, Planning Division.*

[FR Doc. 87–7464 Filed 4–3–87; 8:45 am]

BILLING CODE 3710-06-M

## DEPARTMENT OF EDUCATION

**[CFDA No.: 84.128H]**

### Invitation; Applications for New Awards Under the American Indian Vocational Rehabilitation Service Projects Program for Fiscal Year 1987

*Purpose:* This program supports projects which provide vocational

rehabilitation services to American Indians with handicaps who reside on Federal and State reservations. Governing bodies of Indian tribes and consortia of such bodies located on Federal and State reservations may apply for these grants.

*Deadline for Transmittal of Applications:* May 22, 1987.

*Applications Available:* April 10, 1987.

*Available Funds:* $1,941,000.

*Estimated Range of Awards:* $200,000 to $240,000.

*Estimated Size of Awards:* $220,000.

*Estimated Number of Awards:* 9.

*Project Period:* 36 months.

*Applicable Regulations:* Regulations applicable to this program include the following:

(a) Regulations governing the Handicapped American Indian Vocational Rehabilitation Service Projects Program (34 CFR Parts 369 and 371); and

(b) Education Department General Administrative Regulations (EDGAR) (34 CFR Parts 74, 75, 77 and 78).

*For Applications or Information Contact:* Frank S. Caracciolo, Office of Developmental Programs, Rehabilitation Services Administration, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3320 Switzer Building, MS 2312, Washington, DC 20202. Telephone: (202) 732–1340.

*Program Authority:* 29 U.S.C. 750.

Dated: April 1, 1987.

**Madeleine Will,**

*Assistant Secretary for Special Education and Rehabilitative Services.*

[FR Doc. 87–7564 Filed 4–3–87; 8:45 am]

BILLING CODE 4000–01–M

## Robert C. Byrd Honors Scholarship Program

**AGENCY:** Department of Education.

**ACTION:** Notice of final procedures for implementing the Robert C. Byrd Honors Scholarship Program in fiscal year 1987.

**SUMMARY:** The Secretary establishes procedures to implement the Robert C. Byrd Honors Scholarship Program (the Byrd Scholarship Program) in fiscal year 1987 in accordance with the provisions of the program statute (Title IV, Part A, Subpart 6 of the Higher Education Act of 1965, as amended, 20 U.S.C. 1070d–31 *et seq.*), with certain exceptions. The exceptions are necessary in order to implement applicable statutory provisions enacted, by incorporation by reference in Pub. L. 99–591, titled "Making continuing appropriations for the fiscal year 1987, and for other purposes", at 100 Stat. 3341–287. Because the Department has not issued specific regulations for this program, grant awards to the States for fiscal year 1987 will be governed by the General Education Provisions Act, the Education Department General Administrative Regulations, applicable provisions of the program statute, and the procedures in this notice.

**EFFECTIVE DATE:** This notice takes effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of this notice, call or write the Department of Education contact person.

**FOR FURTHER INFORMATION CONTACT:** Neil C. Nelson, Chief, State Student Incentive Grant Program (Room 4018, RO3#3), Office of Student Financial Assistance, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202 Telephone (202) 245–9720.

**SUPPLEMENTARY INFORMATION:** Under the Byrd Scholarship Program, the Secretary makes available, through grants to the States, scholarships to outstanding high school graduates for the first year of study at institutions of higher education. In the Fiscal Year 1987 Continuing Appropriations Act, Congress appropriated $8 million for the Byrd Scholarship Program. Pursuant to the Continuing Appropriations Act, certain provisions of the program statute will not apply to the administration of the program in fiscal year 1987.

On February 23, 1987, the Secretary published in the **Federal Register** a Notice of Proposed Procedures for Implementing the Robert C. Byrd Honors Scholarship Program in Fiscal Year 1987 (52 FR 5488). No comments were received during the comment period announced in the notice. Therefore, the Secretary adopts the following procedures for fiscal year 1987 in order to implement, to the extent possible, the congressional intent conveyed in the Conference Committee Report on H.R. 5233, the Appropriations Act as reported out of conference (H.R. Rep. No. 960, 99th Cong., 2d Sess. (1986)). These procedures are necessary for the administration of those aspects of the program which, due to superseding statutory provisions in the Continuing Appropriations Act, are not governed by provisions of the program statute for fiscal year 1987.

1. The Secretary will allot to the States the funds appropriated for the Byrd Scholarship Program in fiscal year 1987 in accordance with the provisions of section 419D of the program statute, except that the amount allotted for scholarship payments to each State will be $1,500 multiplied by the number of scholarships the Secretary has assigned to the State. The Secretary will assign to each State participating in the program the number of Byrd Scholarships which bears the same ratio to the total number of scholarships made available to all States as the State's school-aged population (ages five through seventeen) bears to the total school-aged population in all participating States, except that no State shall receive fewer than 10 scholarships. The population figures used to calculate the allotment of funds will be determined by the most recently available data from the United States Census Bureau.

2. States shall administer their fiscal year 1987 allotments under the Byrd Scholarships Program, for scholarships for academic year 1987–88, in accordance with the provisions of the program statute. However, due to the continuing appropriations act (Pub. L. 99–591), sections 419G(b) and 4919(a) of the program statute will not apply to the fiscal year 1987 appropriation. Thus, States shall also administer their fiscal year 1987 allotments in accordance with the following procedures—

(a) Byrd Scholars shall be selected solely on the basis of demonstrated outstanding academic achievement, promise of continued academic achievement, and the geographic consideration described in item 2(b) below.

(b) Byrd Scholars shall be selected in such a way that all parts of a State are fairly represented, and no part of a State has a disproportionate share of awards.

(Catalog of Federal Domestic Assistance No. 84.185, Robert C. Byrd Honors Scholarship Program)

Authority: 20 U.S.C. 1070d–31 *et seq.*

Dated: April 2, 1987.

**William J. Bennett,**

*Secretary of Education.*

[FR Doc. 87–7633 Filed 4–3–87; 8:45 am]

BILLING CODE 4000–01–M

## DEPARTMENT OF ENERGY

### University of Alabama Grant Award

**AGENCY:** Department of Energy, Nevada Operations Office.

**ACTION:** Notice of restriction of eligibility for grant award.

**SUMMARY:** The Department of Energy, Nevada Operations Office, announces that it intends to award a grant to the University of Alabama in the amount of $150,000 for a three-year project period. Pursuant to the DOE Financial Assistance Rules, 10 CFR 600.7(b), DOE Nevada has determined that eligibility

for this grant award shall be limited to the University of Alabama.

Grant Number: DE–FG08–87NV10672

**Scope of Project**

The principal purpose is to assist the University of Alabama at Huntsville to conduct fundamental analyses by experimental test of developing alkaline battery technology. The physical and chemical phenomena and mechanisms discovered will guide continuing research into this family of battery types. The value to the Department of Energy and other federal agencies, and the scientific and technology communities is derived through the technology base of alkaline battery couples. Of further importance is that supporting this activity will help maintain a supply of trained scientists that will be required to meet the nation's future needs in energy conservation research and electrochemical energy storage.

**FOR FURTHER INFORMATION CONTACT:** Brad Bourn, U.S. Department of Energy, Nevada Operations Office, P.O. Box 14100, Las Vegas, NV 89114–4100, Telephone: (702) 295–1038.

Issued in Las Vegas, Nevada, March 23, 1987.

**Thomas R. Clark,**

*Manager.*

[FR Doc. 87–7570 Filed 4–3–87; 8:45 am]

BILLING CODE 6450–01–M

## Office of General Counsel Intent To Grant Exclusive Patent License; Fermethanol, Inc.

Notice is hereby given of an intent to grant to Fermethanol, Inc. of Tulsa, Oklahoma, an exclusive license to practice in the United States the invention described in U.S. Patent No. 4,359,533, entitled "Fermentation Alcohol Production." The patent is owned by the United States of America, as represented by the Department of Energy (DOE).

The proposed exclusive license will be subjecct to a license and other rights retained by the U.S. Government, and will be subject to a negotiated royalty provision. DOE intends to grant the license, upon a final determination in accordance with 35 U.S.C. 209(c), unless within 60 days of this notice the Assistant General Counsel for Patents, Department of Energy, Washington, DC 20585, receives in writing any of the following, together with supporting documents:

(i) A statement from any person setting forth reasons why it would not be in the best interests of the United States to grant the proposed license; or

(ii) An application for a nonexclusive license to the invention in the United States, in which applicant states that he has already brought the invention to practical application or is likely to bring the invention to practical application expeditiously.

The Department will review all written responses to this notice, and will grant the license if, after expiration of the 60-day notice period, and after consideration of written responses to this notice, a determination is made, in accordance with 35 U.S.C. 209(c), that the license grant is in the public interest.

Issued in Washington, DC, on March 30, 1987.

**J. Michael Farrell,**

*General Counsel.*

[FR Doc. 87–7571 Filed 4–3–87; 8:45 am]

BILLING CODE 6450–07–M

## Economic Regulatory Administration

**[ERA Docket No. 86–52–NG]**

## Bonus Energy, Inc.; Order Granting Blanket Authorization to Import Natural Gas From Canada

**AGENCY:** Economic Regulatory Administration, Department of Energy.

**ACTION:** Notice of order granting blanket authorization to import natural gas from Canada.

**SUMMARY:** The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that it has issued an order granting Bonus Energy, Inc. (Bonus), blanket authorization to import natural gas from Canada. The order issued in ERA Docket No. 86–52–NG authorizes Bonus to import up to 50 Bcf per year over a two-year period for sale in the domestic spot market.

A copy of this order is available for inspection and copying in the Natural Gas Division Docket Room, GA–076, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, March 24, 1987.

**Barton R. House,**

*Deputy Director, Office of Fuels Programs, Economic Regulatory Administration.*

[FR Doc. 87–7489 Filed 4–3–87; 8:45 am]

BILLING CODE 6450–01–M

## Federal Energy Regulatory Commission

**[Project No. 3033–004]**

## Arkansas Electric Cooperative Corp., Riceland Electric Cooperative, Inc., and C&L Electric Cooperative Corp.; Application for Transfer of License (Major)

March 31, 1987.

Take notice that Arkansas Electric Cooperative Corporation (AECC), Riceland Electric Cooperative, Inc., and C&L Electric Cooperative Corporation, licensee for Lock and Dam No. 2 Project, have requested that AECC be made the sole licensee for Project No. 3033. The license was issued on August 10, 1983, and would expire on August 1, 2033. The project is located on the Arkansas River in Desha and Arkansas Counties, Arkansas, and is currently under construction.

Correspondence with the applicants should be directed to: Robert M. Lyford, Staff Attorney, Arkansas Electric Cooperative Corporation, P.O. Box 9469, Little Rock, Arkansas 72219, Fred Carlisle, Manager, Riceland Electric Cooperative, Inc., P.O. Box 906, Stuttgart, Arkansas 72160, and W. H. Frizzell, Manager, C&L Electric Cooperative Corporation, P.O. Drawer 9, Star City, Arkansas 71667.

**Comments, Protests, or Motions to Intervene**

Anyone may file comments, a protest, or a motion to intervene in accordance with the requirements of Rule 211 or 214, 18 CFR 385.211 or 385.214, 47 FR 19025–19026 (1982). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests or motions to intervene must be filed on or before May 8, 1987.

**Filing and Service of responsive Documents**

Any filings must bear in all capital letters the title "Comments", "Protest, or Motion to Intervene", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. An additional copy must be sent to: Fred E. Springer, Director, Division of Project

Management, Office of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any motion to intervene must also be served upon each representative of the applicant specified in the second paragraph of this notice.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 87-7483 Filed 4-3-87; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. RP87-49-000]**

## K N Energy, Inc., Petition for Declaratory Order

March 31, 1987.

Take notice that on March 18, 1987, K N Energy, Inc. (K N) petitioned the Federal Energy Regulatory Commission (Commission) for the issuance of a declaratory order giving K N the authority to include in its jurisdictional cost of service the amounts which the Commission authorizes Plains Petroleum Company and Plains Petroleum Operating Company (Plains) to charge K N in Docket No. RI87-2-000; and in addition, that K N may include such costs in its Account No. 191 and pass them on to its customers in its future PGA filings.

As background, K N states that Plains has a pending petition before the Commission for recovery of excess royalty payments and for a declaratory order in Docket No. RI87-2-000. In its petition, Plains seeks Commission authorization to increase rates charged for natural gas produced and sold by Plains to K N to the extent necessary to make Plains whole for certain royalty payments to owners of land from which Plains produces such gas. Plains bases its claim to recover royalty payments on a December 29, 1986 settlement agreement approved by the District Court of Kearny County, Kansas. Plains bases its right to recover these costs from K N on the terms of a Gas Purchase Contract between Plains Production Company and K N.

K N asserts that Plains has only a contingent right to charge K N the excess royalty costs. Plains can charge K N such higher costs only if and when K N is authorized to include those costs in its jurisdictional cost of service. K N further states that Plains has not sought a Commission order authorizing K N to include in its jurisdictional cost of service the amounts for which Plains seeks authority to charge K N. Therefore, K N notes, the Commission cannot grant Plains' petition unless and until it has granted K N the authorization needed to include such costs in its jurisdictional cost of service. K N states that it has no rate proceeding before the Commission which provides an appropriate vehicle by which the Commission may authorize K N to include in its jurisdictional cost of service the costs which Plains seeks authority to charge.

K N has served a copy of this petition upon counsel for Plains Petroleum Company.

Any person desiring to be heard or to protest said petition should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before 4/21/87. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 87-7480 Filed 4-3-87; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket Nos. CI87-391-000 and CI87-392-000]**

## Marathon Oil Co.; Application

March 31, 1987.

Take notice that on March 24, 1987, Marathon Oil Company ("Marathon") filed in this proceeding an application pursuant to sections 4 and 7 of the Natural Gas Act ("NGA") and § 2.77, Parts 154 and 157 of the Commission's regulations. The application requests an order (1) authorizing blanket permanent abandonment of the sale for resale of natural gas in interstate commerce to ARKLA INC. ("Arkla") from Eugene Island Area, Blocks 37, 38, 57 and 58, (2) issuing a blanket limited-term certificate of public convenience and necessity authorizing the sale for resale of such natural gas in interstate commerce for three years, and (3) authorizing blanket pre-granted abandonment of any sales for resale of natural gas made under the requested certificate. Marathon also requests waiver of certain Commission regulations including those in Parts 154 and 271 of the Commission's regulations and requests that the authorizations sought in this proceeding be considered on an expedited basis.

This application involves the abandonment of approximately 35,000 Mcf/day of natural gas qualifying under NGPA Sections 102 and 104. This gas is presently dedicated to Arkla by Marathon under a contract dated September 12, 1977 and on file with the Commission as Marathon's Rate Schedule 149. Arkla has agreed to permanently release all the gas under this contract. Arkla is currently purchasing approximately 10 percent of the deliverability under this contract and Arkla is not making take-or-pay payments on this gas. Marathon states that approval of this Application will relieve Arkla of take-or-pay obligations and permit Marathon to sell this gas to others at market-clearing levels.

The circumstances presented in the application meet the criteria for consideration on an expedited basis, pursuant to § 2.77 of the Commission's rules as promulgated by Order No. 436 and 436-A, issued October 9, and December 12, 1985, respectively, in Docket No. RM85-1000, all as more fully described in the application which is on file with the Commission and open to public inspection.

Accordingly, any person desiring to be heard or to make any protest with reference to said application should on or before 15 days after the date of publication of this notice in the **Federal Register**, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding herein must file a petition to intervene in accordance with the Commission's Rules.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 87-7488 Filed 4-3-87; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. CP87-206-000]**

## Natural Gas Pipeline Company of America; Application

March 31, 1987.

Take notice that on February 17, 1987, Natural Gas Pipeline Company of America (Applicant), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP87-206-000 an application pursuant to section 7(b) of the Natural

Gas Act for authorization to abandon a portion of Applicant's sales service to two customers, Iowa Electric Light and Power Company (Iowa Electric) and Iowa Southern Utilities Company (Iowa Southern) effective March 18, 1987, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Applicant indicates that Iowa Electric and Iowa Southern gave notice on September 4, 1986, and September 15, 1986, respectively, of their intent to exercise their option to reduce by fifteen percent the level of their existing firm sales contract quantity in existence on September 4, 1986, the date Applicant first became subject to § 284.10 of the Commission's Regulations. Applicant indicates that Electric's firm sales contract quantity of 48.541 billion Btu equivalent of gas per day would be reduced by fifteen percent, or 7.281 billion equivalent Btu per day, to 41.260 billion Btu equivalent per day. It is also indicated that Iowa Southern's firm sales contract quantity of 10.497 billion Btu equivalent per day would be reduced by fifteen percent, or 1.575 billion equivalent per day, to 8.922 billion Btu equivalent per day. Applicant states that these reductions would be effective on March 18, 1987, according to § 284.10(c)(2)(B) of the Commission's Regulations.

Applicant notes that because § 284.10 of the Commission's Regulations is currently on appeal to the DC Circuit Court of Appeals in *Associated Gas Distributors, et al., v. FERC, No. 85–1811*, it proposes that any abandonment should be made contingent on that appeal.

Any person desiring to be heard or to make any protest with reference to said application should on or before April 14, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 87–7475 Filed 4–3–87; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. ER87–185–001]**

## The Washington Water Power Co.; Amended Filing

March 26, 1987.

Take notice that on March 20, 1987, The Washington Water Power Company (Washington) tendered for filing copies of an Amended Filing for the filing which was tendered December 22, 1986 (Docket No. ER87–185–000) regarding Washington's FERC Electric Tariff Original Volume No. 3 (Tariff 3). The Amended Filing clarifies deficiencies to that filing relating to the revised tariff rate for nonfirm energy from noncontrollable hydroelectric resources and a revised index of purchasers.

By this Amended Filing, Washington has filed the 19 Service Agreements to complete the Tariff 3 Index of Purchasers as submitted December 22, 1986, and has requested a waiver of the 60-day filing requirements stating that there will be no effect upon purchasers under other rate schedules. No new facilities were installed to meet the requirements of these Agreements.

Washington restates its request of December 22, 1986, that Tariff 3 supersede Washington's Rate Schedule FPC. No. 88. Washington also requests that the applicable Tariff 3 Service Agreements supersede the following Washington FPC/FERC Rate Schedules: No. 133 (City of Anaheim); No. 134 (City of Burbank); No. 135 (City of Glendale); No. 139 (City of Los Angeles); No. 144 (Northern California Power Agency); Nos. 88.1, 120, and 122 (Pacific Gas and Electric Company); Nos. 86 and 136 (City of Pasadena); No. 112 (Portland General Electric Company); Nos. 111 and 115 (San Diego Gas & Electric Company); No. 114 (Southern California); and No. 87.1 (Service Agreement W–1 under the Intercompany Pool Agreement.)

Copies of the Amended Filing have been sent to affected parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before April 9, 1987.

Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 87–7485 Filed 4–3–87; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. RP87–33–003]**

## Williams Natural Gas Co.; Filing of Revised Tariff Sheets

March 31, 1987.

Take notice that Williams Natural Gas Company (WNG) on March 23, 1987, tendered for filing to become a part of its FERC Gas Tariff:

**First Revised Volume No. 1**

Revised Original Sheet Nos. 6 and 7
Revised Original Sheet Nos. 41 through 53

**Original Volume No. 2**

Revised Third Revised Sheet No. 219

These pages are filed in accordance with Ordering Paragraphs (B), (C), (D), (E), (G), (H), (I) and (K) of the Commission's Order Accepting and Suspending Tariff Sheets Subject to Refund and Conditions, Establishing Hearing and Granting Intervention issued February 20, 1987 in this proceeding. The revised tariff sheets are proposed to be effective after suspension on July 23, 1987.

WNG states that copies of its filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's rules of practice and procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before April 8, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 87-7486 Filed 4-3-87; 8:45 am]

BILLING CODE 6717-01-M

**[Docket No. TA87-3-43-000 and 001]**

## Williams Natural Gas Co.; Proposed Changes in FERC Gas Tariff

March 31, 1987.

Take notice that Williams Natural Gas Company (WNG) on March 23, 1987, tendered for filing First Revised Sheets Nos. 6, 7 and 8 to its FERC Gas Tariff, Original Volume No. 1. WNG states that pursuant to the Purchased Gas Adjustment in Article 21 and the Incremental Pricing of Provisions in Article 24 of its FERC Gas Tariff, it proposes to increase its rates effective April 23, 1987, to reflect:

(1) A 36.79¢ per Mcf increase in the Cumulative Adjustment as measured against WNG's last regular PGA filing in Docket No. TA87-1-43-000 which became effective October 23, 1986 and 40.99¢ per Mcf increase as measured against WNG's "flex PGA" filing in Docket No. TF87-1-43-000 which became effective on December 23, 1986, due to an increase in WNG's projected gas purchase costs.

(2) A 5.22¢ per Mcf increase in the Surcharge Adjustment (to a positive 2.14¢ per Mcf from a negative 3.08¢ per Mcf) to amortize the Deferred Purchased Gas Cost Subaccount Balance.

WNG states that copies of its filing were served on all jurisdictional customers and interested State commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's rules of practice and procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before April 7, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 87-7487 Filed 4-3-87; 8:45 am]

BILLING CODE 6717-01-M

**[Docket No. CI87-364-000 et al.]**

## Northwest Exploration Co. et al.; Applications for Certificates, Abandonments of Service and Petitions to Amend Certificates [1]

March 31, 1987.

Take notice that each of the Applicants listed herein has filed an application or petition pursuant to section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce or to abandon service as described herein, all as more fully described in the respective applications and amendments which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before April 15, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, petitions to intervene or protests in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

**Kenneth F. Plumb,**

*Secretary.*

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

| Docket No. and date filed | Applicant | Purchaser and location | Price per Mcf | Pressure base |
|---|---|---|---|---|
| CI87-364-000 (CI78-1236), B, Mar. 11, 1987. | Northwest Exploration Company, P.O. Box 1526, Salt Lake City, Utah 84110-1526. | Northwest Pipeline Corporation, Rio Blanco County, Colorado. | (1) | |
| CI87-365-000 (CI78-1235), B, Mar. 11, 1987. | do | do | (2) | |
| CI87-369-000 (CI78-50), B, Mar. 11, 1987. | do | do | (3) | |
| CI87-370-000 (CI78-49), B, Mar. 11, 1987. | do | do | (4) | |
| CI87-372-000 (CI76-361), B, Mar. 11, 1987. | do | do | (5) | |
| CI87-363-000 (CI79-206), B, Mar. 11, 1987. | do | Northwest Pipeline Corporation, San Juan County, New Mexico. | (6) | |
| CI87-366-000 (CI78-887) B, Mar. 11, 1987. | do | do | (7) | |

| Docket No. and date filed | Applicant | Purchaser and location | Price per Mcf | Pressure base |
|---|---|---|---|---|
| CI87-367-000 (CI78-330), B, Mar. 11, 1987 | .....do..... | Northwest Pipeline Corporation, Moffat County, Colorado. | (8)..... | |
| CI87-368-000 (CI78-62), B, Mar. 11, 1987. | .....do..... | Northwest Pipeline Corporation, Sweetwater County, Wyoming. | (9)..... | |
| CI87-371-000 (CI76-282), B, Mar. 11, 1987. | .....do..... | Northwest Pipeline Corporation, Lincoln County, Wyoming. | (10)..... | |
| CI87-377-000 F, Mar. 16, 1987. | Amoco Production Company, P.O. Box 3092, Houston, Texas 77253. | Natural Gas Pipeline Compnay of America, Lowe Deep Field, Duval County, Texas. | (11)..... | |
| CI87-378-000, A, Mar. 16, 1987. | .....do..... | Transwestern Pipeline Company, Kermit Field, Winkler County, Texas. | (12)..... | |
| CI87-379-000 (G-11231), B, Mar. 17, 1987. | .....do..... | Natural Gas Pipeline Company of America, East Maxine Field, Live Oak County, Texas. | (13)..... | |
| G-11083-002, D, Mar. 13, 1987. | Conoco Inc., P.O. Box 2197, Houston, Texas 77252. | Texas Eastern Transmission Corporation, Cabeza Creek Field, Goliad County, Texas. | 14..... | |
| CI64-1298-000, D, Mar. 20, 1987. | .....do..... | El Paso Natural Gas Company, Jalmat-Langlie-Mattix Field, Lea County, New Mexico. | (15)..... | |
| CI87-376-000 (G-8608), B, Mar. 13, 1987. | .....do..... | Tennessee Gas Pipeline Company, a Division of Tenneco Inc., South Crowley Field, Acadia Parish, Louisiana. | (16)..... | |
| CI87-383-000, B, Mar. 18, 1987. | .....do..... | Phillips Petroleum Company, South Powder River Basin, Poison Draw Field, Converse County, Wyoming. | (17)..... | |
| CI83-168-005, D, Mar. 23, 1987. | Cities Service Oil and Gas Corp., P.O. Box 300, Tulsa, Okla. 74102. | Tennessee Gas Pipeline Company, a division of Tenneco, Inc., SW/4 West Delta Block 52, State Lease 977, Offshore Louisiana. | (18)..... | |
| CI87-323-000, B, Feb. 19, 1987. | Stephen Johnson d/b/a AGCO Petroleum Company, 1300 Main—Suite 1435, Houston, Texas 77002. | Tennessee Gas Pipeline Company, a division of Tenneco, Inc., Hidalgo County, Texas. | (19)..... | |
| CI87-389-000 (CI63-708), B, Mar. 23, 1987. | Verdad Oil & Gas Corporation, P.O. Box 286, Sulphur Springs, Texas 75482. | Farmland Industries, Inc., Schleicher County, Texas. | (21)..... | |
| CI80-245-002, D, Feb. 5, 1987. | Sohio Petroleum Company, P.O. Box 4587, Houston, Texas 77210. | Panhandle Eastern Pipe Line Company, Box Elder Field, Adams County, Colorado. | (22)..... | |
| CI64-1302-000, D, Mar. 19, 1987. | Conoco Inc..... | El Paso Natural Gas Company, Jalmat Field, Lea County, New Mexico. | (23)..... | |
| CI87-362-000, B, Mar. 11, 1987. | Northwest Exploration Company..... | Northwest Pipeline Corporation, Daggett County, Utah. | (24)..... | |

[1] Only two wells were drilled on acreage covered by the 8-8-78, Gas Purchase Contract. Both wells were plugged and abandoned without production. The remaining acreage has not been developed.

[2] The acreage covered by the 7-29-78, Gas Purchase Contract has been sold to Fina Oil and Chemical Company and American Cometra Inc. effective 12-29-86.

[3] Only two wells were drilled on acreage covered by the 9-15-77, Gas Purchase Contract. Both wells were plugged and abandoned without production. The remaining acreage has not been developed.

[4] The acreage covered by the 8-31-77, Gas Purchase Contract has been sold to Fina Oil and Chemical Company and American Cometra Inc. effective 12-29-86.

[5] The acreage covered by the 1-7-76, Gas Purchase Contract has been sold to Fina Oil and Chemical Company and American Cometra Inc. effective 12-29-86.

[6] The acreage covered by the 12-4-79, Gas Purchase Contract has been sold to Fina Oil and Chemical Company and American Cometra Inc. effective 12-29-86.

[7] A portion of the acreage covered by the 5-26-78, Gas Purchase Contract has been sold to Ultramar Oil and Gas Limited and GeoVest Energy, Inc., effective 4-1-84. The interest in the remaining acreage was transferred to Lawrence O. Van Ryan effective 4-1-84.

[8] The acreage covered by the 12-5-77, Gas Purchase Contract was sold to JN Oil and Gas effective 6-1-84. Six wells were completed on the acreage and two of the wells have been plugged and abandoned.

[9] The acreage covered by the 10-4-77, Gas Purchase Contract has not been developed.

[10] A portion of the acreage covered by the 10-24-75, Gas Purchase Contract has been sold to Lawrence O. Van Ryan and Dolores E. Van Ryan effective 9-1-84. A portion of the acreage covered by the Gas Purchase Contract was sold to John J. Christmann effective 6-13-79 and Christmann subsequently sold it to La Barge Minerals Inc. The remaining acreage under the 10-24-75, Gas Purchase Contract has not been developed.

[11] Hanson Minerals Company assigned certain interests to Applicant effective 11-1-84.

[12] Applicant is filing under a Gas Purchase Agreement dated 3-8-84.

[13] Duty Gas Unit Well No. 1 was plugged and abandoned 4-26-85.

[14] Effective 11-1-86, Conoco assigned its interst in certain depths underlying the J.E. Pettus Lease (Conoco Land Lease No. 205963) to Ken Perkins Oil and Gas, Inc. The Yegua Formation was included in the assigned depths.

[15] By Assignment dated 2-21-86, effective 12-1-85, Conoco Inc. conveyed to D.P. Properties, Inc., all of its rights down the base of the San Andres Formation underlying the NW/4 SW/4 Section 1, S/2 NW/4 and SW/4 NE/4 Section 12-25S-36E, Lea County, New Mexico.

[16] Gas Contract passed its term and no gas is sold by Conoco from the acreage subject to FERC Gas Rate Schedule No. 128.
[17] Lease expiration.
[18] Cities Service released its operating rights upon demand by the State of Louisiana, effective 8-1-86, in the SW/4 of West Delta Block 52, State Lease 977, Offshore Louisiana, consisting of 749.99 acres.
[19] Gas purchaser has terminated gas contract effective 1-1-87. Without an active gas contract, AGCO is subject to arbitrary pricing and takes, as set by the gas purchaser.
[20] Not used.
[21] Uneconomical to produce.
[22] The Jeff Drohan #2-16 well located in Section 16-T3S-R65W, Adams County, Colorado qualifies as a casinghead gas well; and in accordance with Article III of the 1971 contract, Panhandle Eastern has elected not to take any such casinghead gas. As a potential purchase, Koch Hydrocarbon Inc. had offered to purchase 100% of the casinghead gas and Sohio will pursue this alternate market.
[23] By assignment dated 2-21-86, retroactively effective 12-1-85, Conoco conveyed to D.P. Properties, Inc. all rights down to the base of the San Andres Formation underlying S/2 NW/4 & SW/4 NE/4 Section 12-25S-36E, Lea County, New Mexico.
[24] A portion of the acreage covered by the 4-10-75 Gas Purchase Contract has been sold to Lawrence O. Van Ryan and Dolores E. Van Ryan effective 4-1-84. The property assigned to Van Ryan included the Betty Bee #1 Well, the only completed, producing well on the acreage covered by Gas Purchase Contract. The remaining acreage under the Gas Purchase Contract has not been developed.
Filing Code: A—Initial Service; B—Abandonment; C—Amendment to add acreage; D—Amendment to delete acreage; E—Total Succession; F—Partial Succession.

[FR Doc. 87-4781 Filed 4-3-87; 8:45 am]
BILLING CODE 6717-01-M

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**[Docket No. TA87-3-46-000, 001]**

## Kentucky West Virginia Gas Co.; Proposed Change in FERC Gas Tariff

March 31, 1987.

Take notice that Kentucky West Virginia Gas Company (Kentucky West) on March 27, 1987, tendered for filing with the Federal Energy Regulatory Commission (Commission) its Twenty-Second Revised Sheet No. 27A to its FERC Gas Tariff, First Revised Volume No. 1, to become effective April 1, 1987.

The proposed tariff sheet amends the PGA filing made by Kentucky West herein on September 26, 1986, so as to reflect an Interim Purchase Gas Cost Rate Adjustment, in order to reflect a reduction in current purchase gas costs due to Kentucky West's exercise of market-out provisions in its various gas purchase contracts with independent producers and purchases of natural gas from affiliated companies, effective April 1, 1987.

The current purchase gas adjustment is a reduction of 21.55c per dekatherm (dth). This reduction results in a total net jurisdictional Purchase Gas Cost Charge of 157.96c per dth, to become effective April 1, 1987.

Apart from reflecting the decrease in purchase gas costs resulting from Kentucky West's exercise of market-out provisions effective April 1, 1987, no other amendment is proposed by Kentucky West to its PGA filing herein of September 26, 1986.

Kentucky West states that a copy of its filing has been served upon its purchasers and interested state commissions and upon each party to these proceedings.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before April 7, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Kenneth F. Plumb,**
*Secretary.*

[FR Doc. 87-7482 Filed 4-3-87; 8:45 am]
BILLING CODE 6717-0-M

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**[Docket No. RP87-30-004]**

## Colorado Interstate Gas Co.; Compliance Filing

March 31, 1987.

Take notice that on March 26, 1987, Colorado Interstate Gas Company (CIG) tendered for filing proposed changes in its FERC Gas Tariff, Original Volume Nos. 1 and 2, and First Revised Volume No. 1-A.

CIG states that the purpose of this filing is to comply with the directive stated in Ordering Paragraph (B) of the Commission's order of February 13, 1987 (Order) requiring CIG to eliminate the Capacity Commitment Standby Charge and the Payment of Gas Oversupply Costs tariff language. In addition, CIG recomputed its jurisdictional rates utilizing the 34 percent Federal income tax rate. The filing states that CIG inadvertently failed to eliminate the above-mentioned tariff provision within the 15-day period established in the Order and respectfully requested a waiver of that provision.

CIG has served copies of this filing upon its jurisdictional customers and interested public bodies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's rules of practice and procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before April 7, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Kenneth F. Plumb,**
*Secretary.*

[FR Doc. 87-7477 Filed 4-3-87; 8:45 am]
BILLING CODE 6717-01-M

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**[Docket No. RP87-38-002]**

## Louisiana-Nevada Transit Co., Compliance Filing

March 31, 1987.

Take notice that on March 20, 1987, Louisiana-Nevada Transit Company (LNT) tendered for filing revised tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1, in compliance with Ordering Paragraph (B) of the Commission's order of March 5, 1987, and the notice of extension of time of March 10, 1987 in the above-referenced docket. According to § 381.103(b)(2)(iii) of the Commission's regulations (18 CFR 381.1039b)(2)(iii)), the date of filing is the date on which the Commission receives the appropriate filing fee, which in the instant case was not until March 24, 1987. The effective date for the sheets is March 5, 1987.

LNT states that it has served a copy of this filing on Arkansas Louisiana Gas Company and the Arkansas Public Service Commission.

Any person desiring to be heard or to protest said filing should file a motion to

intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's rules of practice and procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before April 7, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 87-7478 Filed 4-3-87; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. GP87-40-000 MMS Docket G4-4428]**

## Minerals Management Service, Louisiana; Section 102(d) NGPA Determination; Conoco, Inc.; No. E-10 Well, Sidetrack No. 1; Preliminary Finding

March 27, 1987.

On February 12, 1987, the Minerals Management Service, Department of Interior (MMS) at New Orleans, Louisiana, submitted to the Commission a notice of determination. The notice stated that gas produced from the No. E-10, Sidetrack No. 1 well (the subject well) located on the Outer Continental Shelf (OCS), offshore Louisiana, (Grand Isle 41) owned by Conoco, Inc. (Conoco) meets all the requirements of section 102(d) of the Natural Gas Policy Act of 1978 (NGPA).[1]

Under section 103(d)(1) of the NGPA, natural gas produced from an old lease on the OCS qualifies for the new natural gas ceiling price if the natural gas is produced from a reservoir which was not discovered before July 27, 1976. Section 102(d)(2) states that a reservoir that was penetrated by a well before July 27, 1976, will be considered to have been discovered before July 27, 1976, if any of the criteria in subsection 103(d)(2)(B), concerning production tests and evidence regarding production capability, are satisfied. The section 102(d) criteria specifically refer to the requirements of OCS Order No. 4.[2]

On July 16, 1984, Conoco filed an application with MMS for a determination under NGPA 102(d) with respect to the subject well. The record shows that prior to July 27, 1976, other wells had penetrated the subject reservoir (EA sand) and that one well (the Grand Isle 41 No. E-11 well) had discovered the reservoir prior to July 21, 1976, within the meaning of section 102(d)(2)(B)(iii) of the NGPA.[3] Accordingly, MMS issued a preliminary negative determination on November 20, 1984, and issued a final negative determination on December 24, 1984. MMS forwarded the final negative determination to the Commission on January 16, 1985. Conoco filed with the Commission a protest to that determination, but the Commission took no action on the protest, and MMS' determination became final.[4]

On December 17, 1986, Conoco requested MMS to reopen the record, and permit it to file additional material facts which were omitted in its original filing. The additional evidence consisted of an economic evaluation of the commercial producibility of the discovery well (Grand Isle 41 No. E-11 well) at the time of the initial penetration. On February 9, 1987, MMS issued an Amended Notice of Final Determination, approving the application. The notice stated that the additional evidence, consisting of a detailed economic analysis, indicated that the "well was not commercially producible as defined by § 271.204 . . ." and that the well "does qualify for a positive section 102(d) determination."

In this case there was evidence which appeared to satisfy the production capability test, within the meaning of NGPA section 102(d)(2)(B)(iii), since the induction-electric log test showed that the reservoir contained a zone of producible sand when the reservoir was penetrated prior to July 27, 1976. Under section 102(d)(4)(B), where evidence regarding production capability exists, the producer has the burden of showing the evidence does not provide the applicable indication specified in NGPA section 102(d)(2) that the reservoir was commercially producible. Here, Conoco has failed to do so.

Accordingly, the Commission hereby makes a preliminary finding under 18 CFR 275.202(a)(1)(i) (1986), that the determination submitted by the MMS is not supported by substantial evidence in the record on which the determination was made, and issues this notice under 18 CFR 275.202(a)(2) (1986).

By direction of the Commission.

Commissioner Stalon dissented with a separate statement to be issued later.

**Lois D. Cashell,**

*Acting Secretary.*

[FR Doc. 87-7479 Filed 4-3-87; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. CS87-52-000 et al.]**

## Resource Technology Corp. et al.; Applications for Small Producer Certificates [1]

March 31, 1987.

Take notice that each of the Applicants listed herein has filed an application pursuant to section 7(c) of the Natural Gas Act and § 157.40 of the Commission's Regulations thereunder for a small producer certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce, all as more fully set forth in the applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make a protest with reference to said applications should on or before April 15, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

**Kenneth F. Plumb,**

*Secretary.*

| Docket No. | Date filed | Applicant |
|---|---|---|
| CS87-52-000 | 3-19-87 | Resource Technology Corp., 410 17th Street, Suite 1375, Denver, CO 80202. |
| CS87-53-000 | 3-2-87 | Tyrex Oil Company, P.O. Box 2459, Casper, WY 82602. |

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[1] 15 U.S.C. 3312(d) (1982).

[2] NGPA section 102(d)(5) defines OCS Order No. 4 as "the order numbered 4 of the Conservation Division, Geological Survey, Department of the Interior, as approved by the Chief of the Conservation division on August 28, 1969." Order No. 4 sets forth certain tests, which if satisfied, permit an extension of an OCS lease beyond its primary term in the absence of actual production.

[3] Induction logs for that well indicated that the EA sand in that well showed in excess of 15 feet of producible sand.

[4] Docket No. GP86-15-000.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

| Docket No. | Date filed | Applicant |
|---|---|---|
| CS87-54-000 | 3-2-87 | Pape's Oilfield Service, P.O. Box 66, Bennett, CO 80102. |
| CS87-55-000 | 3-9-87 | Arlington Exploration Company, 137 Newbury Street, Boston, MA 02116. |
| CS87-56-000 | 3-10-87 | DP Properties, Inc., Box 1319, Sweetwater, TX 79556. |
| CS87-57-000 | 3-12-87 | Broussard Number One, Broussard Number One, Inc., Florida Petroleum Properties, Inc., Virginia W. Kennard and Compton K. Kennard, P.O. Box 6242, Fort Myers, FL 33911. |
| CS87-58-000 | 3-13-87 | J.M. Stewart, 9201 Wilshire Blvd., Suite 201, Beverly Hills, CA 90210. |
| CS87-59-000 | 3-13-87 | Alliance Operating Corporation, 4739 Utica Street, Suite 205, Metairie, LA 70006. |
| CS87-60-000 | 3-17-87 | JMC Exploration, Inc., 5000 Rogers Avenue, Suite 810, Fort Smith, AR 72903. |
| CS87-61-000 | 3-23-87 | John William Bowers, 9010 Woodbluff Court, 9010 Woodbluff Court, Dallas, TX 75243. |

[FR Doc. 87-7484 Filed 4-3-87; 8:45 am]
BILLING CODE 6717-01-M

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL-3181-2; EPA Project Number SJ-86-09]**

### Approval of Prevention of Significant Air Quality Deterioration (PSD) Permit to Mount Poso Cogeneration Company

**AGENCY:** Environmental Protection Agency (EPA), Region 9.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that on January 7, 1987 the Environmental Protection Agency issued a PSD permit under EPA's federal regulations 40 CFR 52.21 to the applicant named above. The PSD permit grants approval to construct a 50 MW (nominal) coal-fired fluid bed powerplant to be located in the Mount Poso oil field. The permit is subject to certain conditions, including an allowable emission rate (2-hr average) as follows:

| Pollutant | Mass emission limit | Concentration emission limit |
|---|---|---|
| $NO_x$ (as $NO_2$). | 58.6 lbs/hr | 0.10 lb/$10^6$ BTU [1] (equivalent to 65 ppmdv at 3% $O_2$). |
| $SO_2$ | 25.0 lbs/hr | 0.04 lb/$10^6$ BTU[1]. |
| CO | 50.3 lbs/hr | |
| TSP | | 0.01 gr/dscf (at 12% $CO_2$). |

[1] The $NO_x$ and $SO_2$ concentration limits apply at full load only.

**FOR FURTHER INFORMATION CONTACT:** Copies of the permit are available for public inspection upon request; address request to: Anita Tenley (A-3-1), U.S. Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, CA 94105, (415) 974-8240, FTS 454-8240.

**SUPPLEMENTARY INFORMATION:** Best Available Control Technology (BACT) requirements include the use of a limestone injection system for the control of $SO_2$, a Thermal De-Nox system (or equivalent) for the control of $NO_x$, and a baghouse to control TSP, $SO_2$, and radionuclide emissions.

**DATE:** The PSD permit is reviewable under section 307(b)(1) of the Clean Air Act only in the Ninth Circuit Court of Appeals. A petition for review must be filed by June 5, 1987.

Dated: February 23, 1987.

**Carl C. Kohnert,**

*Acting Director, Air Management Divisions, Region 9.*

[FR Doc. 87-7522 Filed 4-3-87; 8:45 am]
BILLING CODE 6560-50-M

**[FRL-3181-1; EPA Project Number SE 86-02]**

### Approval of Prevention of Significant Air Quality Deterioration (PSD) Permit to AFG Industries, Incorporated

**AGENCY:** Environmental Protection Agency (EPA), Region 9.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that on December 8, 1986 the Environmental Protection Agency issued a PSD permit under EPA's federal regulations 40 CFR 52.21 to the applicant named above. The PSD permit grants approval to construct a 500 ton per day flat glass manufacturing facility to be located in Victorville, California. The permit is subject to certain conditions, including an allowable emission rate (3-hr average) as follows: for $SO_2$—10.5 lbs/hr, and for $NO_x$ (as $NO_2$)—150 lbs/hr. A new higher $NO_x$ emission limit may not be set without adequate justification from AFG Industries, and may not exceed 200 lbs/hr (3-hr average) from the glass melting furnace.

**FOR FURTHER INFORMATION CONTACT:** Copies of the permit are available for public inspection upon request; address request to: Anita Tenley (A-3-1), U.S. Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, CA 94105, (415) 974-8240, FTS 454-8240.

**SUPPLEMENTARY INFORMATION:** Best Available Control Technology (BACT) requirements include the use of a lime or soda ash dry scrubber for the control of $SO_2$ emissions, and an ammonia injection system for the control of $NO_x$ emissions.

**DATE:** The PSD permit is reviewable under section 307(b)(1) of the Clean Air Act only in the Ninth Circuit Court of Appeals. A petition for review must be filed by June 5, 1987.

Dated: Februray 23, 1987.

**Carl C. Kohnert,**

*Acting Director, Air Management Division, Region 9.*

[FR Doc. 87-7523 Filed 4-3-87; 8:45 am]
BILLING CODE 6560-50-M

**[OPTS-00079; FRL-3181-3]**

### Dermal Bioassay Workshop

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** There will be a 2-day workshop sponsored by the Health and Environmental Review Division of the Office of Toxic Substances to: (a) Identify and address key issues involved in the design of a 2-year dermal bioassay protocol, and (b) to explore the possibilities for developing a "limited" dermal protocol for the screening of acrylates/methacrylates for carcinogenic potential. The workshops will be closed to the public.

**DATES:** The workshops will be held on Tuesday and Wednesday, April 28 and 29, 1987, starting at 9 a.m. both days and ending at approximately 5 p.m. on April 29.

**ADDRESSS:** The meeting will be held at: Environmental Protection Agency, South Conference Center, Room 4, 401 M Street SW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Room E-543, 401 M Street SW., Washington, DC 20460, (202) 554-1404.

**SUPPLEMENTARY INFORMATION:** These closed workshops are being held to discuss carcinogenesis testing by the dermal route. Attendance will be limited to invited participants and observers. A summary of the meeting will be available by request from the above office at a later date.

Dated: March 27, 1987.

**Victor J. Kimm,**

*Assistant Administrator, for Pesticides and Toxic Substances.*

[FR Doc. 87-7524 Filed 4-3-87; 8:45 am]
BILLING CODE 6560-50-M

## FEDERAL HOME LOAN BANK BOARD

[No. 87-378]

### Approval of Application for Unlisted Trading Privileges; Midwest Stock Exchange

Dated: March 31, 1987.

**AGENCY:** Federal Home Loan Bank Board.

**ACTION:** Notice.

**SUMMARY:** On December 3, 1986, The Midwest Stock Exchange, Inc. filed with the Federal Home Loan Bank Board ("Board") an application ("Application"), pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 ("Act") and Rule 12f-1 [17 CFR 240.12f-1] thereunder, for unlisted trading privileges in the following securities which are listed on one or more national securities exchange:

Carteret Savings Bank, F.A. Morristown, New Jersey (FHLBB No. 4702)

Common Stock, $0.01 Par Value

Notice of the Application and opportunity for hearing was published in the **Federal Register** on January 23, 1987, and interested persons were invited to submit written data, views and arguments within 15 days. See Board Resolution No. 87-73 dated January 16, 1987. (52 FR 2605, January 23, 1987). The Board received no comments with respect to the Application. Notice is hereby given that the Office of General Counsel of the Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the Application for unlisted trading privileges in these securities on March 17, 1987.

**SUPPLEMENTARY INFORMATION:** The Board finds that the approval of the Application for unlisted trading privileges in these securities is consistent with the maintenance of fair and orderly markets and the protection of investors. As a national securities exchange registered with the Securities and Exchange Commission ("Commission") pursuant to section 6 of the Act, the Midwest Stock Exchange is subject to the provisions of paragraph (b) of that section, and to the Commission's inspection authority and oversight responsibility under sections 17 and 19 of the Act and the rules and regulations thereunder. Transactions in the subject securities, regardless of the market in which they occur, are reported in the consolidated transaction reporting system contemplated by Rule 11Aa3-1 under the Act [17 CFR 240.11Aa3-1]. The availability of last sale information for the subject securities should contribute to pricing efficiency and to ensuring that transactions on the Midwest Stock Exchange are executed at prices which are reasonably related to those occurring in other markets. Further, the approval of the Application will provide increased opportunities for competition among brokers and dealers and among exchange markets consistent with the purposes of the Act and the objectives of the national market system. Finally, the Board received no comments indicating that the granting of the Application would not be consistent with the maintenance of fair and orderly markets and the protection of investors.

Accordingly, pursuant to section 12(f)(1)(B) of the Act, the Office of General Counsel of the Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the Application for unlisted trading privileges in the above named securities on March 17, 1987.

By the Federal Home Loan Bank Board.

**Jeff Sconyers,**

*Secretary.*

[FR Doc. 87-7568 Filed 4-3-87; 8:45 am]

BILLING CODE 6720-01-M

### Federal Savings and Loan Advisory Council Meeting

**AGENCY:** Federal Home Loan Bank Board.

**ACTION:** Notice of meeting.

**SUMMARY:** This notice sets forth the proposed agenda of a forthcoming meeting of the Federal Savings and Loan Advisory Council. Notice of the meeting is required under the Federal Advisory Committee Act.

**DATE(S):** April 22, 1987, 9:00 a.m.-4:00 p.m.; April 23, 1987, 9:00 a.m.-11:30 a.m.

**ADDRESS:** Federal Home Loan Bank Board, Board Room, 6th Floor, 1700 G. Street NW., Washington, DC 20552.

**FOR FURTHER INFORMATION CONTACT:**

John M. Buckley, Jr. (202/377-6577).
Debra J. Ahearn (202/377-6924).

**SUPPLEMENTARY INFORMATION:** Proposed agenda topics:

1. Regulatory Policy re: expanded use of tangible Net Worth.

2. Forbearance Policy.

No. 2, April 1, 1987.

**Jeff Sconyers,**

*Secretary to the Federal Home Loan Bank Board.*

[FR Doc. 87-7567 Filed 4-3-87; 8:45 am]

BILLING CODE 6720-01-M

[No. 87-379]

### Approval of Application To Withdraw Securities From Listing and Registration on the National Association of Security Dealers Automatic Quotation System

March 31, 1987.

**AGENCY:** Federal Home Loan Bank Board.

**ACTION:** Notice.

**SUMMARY:** On October 27, 1986, Cartaret Savings Bank, F.A. Morristown, New Jersey (the "Association") (FHLBB No. 4702) filed with the Federal Home Loan Bank Board ("Board") an application, ("Application"), pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2-2(d) thereunder, for the withdrawal from listing and registration on the National Association of Securities Dealers Automatic Quotation System ("NASDAQ" or "Exchange"), of the Association's Common Stock, $0.01 Par Value, (the "Stock"). The Association's Stock was approved for listing and registration on the New York Stock Exchange, to begin trading after November 1, 1986, and concurrently therewith such stock was suspended from trading on the Exchange.

Notice is hereby given that the Office of General Counsel of the Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the Application for withdrawal from listing and registration on the Exchange, effective as of the opening of business on March 17, 1987.

**SUPPLEMENTARY INFORMATION:** The reasons stated in the Association's application for withdrawing the securities from the listing and registration on the Exchange include the following:

1. The Association has complied with the required procedure of the Exchange by filing with the Exchange a certified copy of preambles and resolutions adopted by the Association's Board of Directors authorizing the withdrawal of the Stock from listing on the Exchange.

2. The direct and indirect costs and expenses attendant on maintaining the dual listing of the stock on the New York Stock Exchange and the Exchange are not justified.

3. The belief that dual listing would fragment the market for the Stock without offsetting benefits.

4. The Exchange has no objection to the withdrawal of the Association's Stock from listing on the Exchange.

5. The withdrawal from listing of the Association's Stock from the Exchange

shall have no effect upon the continued listing of the Stock on the New York Stock Exchange.

6. By reason of section 12(b) of the Securities Exchange Act of 1934 and the rules and regulations thereunder, the Association shall continue to be obligated to file reports under section 13 of the Act with the Federal Home Loan Bank Board and the New York Stock Exchange.

Notice of the application for withdrawal from listing and an opportunity for hearing were published in the **Federal Register** on January 23, 1987 and interested persons were invited to submit written data, views and arguments within 15 days. See Board Resolution No. 87–72 dated January 16, 1987 (52 FR 2605, January 23, 1987). The Board received no comments on the application.

Accordingly, pursuant to section 12(d) of the Act and Rule 12d2–2(d) thereunder, the Office of the General Counsel of the Board, acting pursuant to the authority delegated to the General Counsel or his designee, having considered the facts stated in the Application and having due regard for the public interest and protection of investors, approved the Application for withdrawal from listing and registration on the Exchange effective as of the opening of business on March 17, 1987.

By the Federal Home Loan Bank Board.

**Jeff Sconyers,**

*Secretary.*

[FR Doc. 87–7569 Filed 4–3–87; 8:45 am]

BILLING CODE 6720–01–M

## FEDERAL MARITIME COMMISSION

### Ocean Freight Forwarder License Applicants; First International Transportation, Inc., et al.

Notice is hereby given that the following persons have filed applications for licenses as ocean freight forwarders with the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and 48 CFR Part 510.

Persons knowing of any reason why any of the following persons should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573.

First International Transportation, Inc., 1388–2 Stone Hollow Drive, Kingwood, TX 77339. Officers: H. Porter Taylor, President, Sandra G. Taylor, Vice President, Donna K. Ilardi, Secretary

Central Bay Warehouse Co., Inc., 1954 Williams Street, San Leandro, CA 94577. Officers: John F. Alonso, Sr., President, John F. Alonso, Jr., Vice President Carol Anne Alonso, Secretary/Treasurer

Schley International, Inc., 2509 Sutter Parkway, Dublin, OH 43017. Officers: James P. Schley, President/Treasurer, Susan U. Schley, Vice President/Secretary

Kyung H. Oh (Harry) dba Inter-Trans Line, 447 S. Berendo Street, #105, Los Angeles, CA 90020.

Dated: March 31, 1987.

**Joseph C. Polking,**

*Secretary.*

[FR Doc. 87–7446 Filed 4–3–87; 8:45 am]

BILLING CODE 6730–01–M

### Ocean Freight Forwarder License; Revocations

Notice is hereby given that the following ocean freight forwarder licenses have been revoked by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR Part 510.

License: Number: 1149
Name: Farrell Transportation Corporation
Address: P.O. Box 4, Upper Darby, PA 19802
Date Revoked: March 3, 1987
Reason: Surrendered license voluntarily

License Number: 2608
Name: CIC International Fowarding, Inc.
Address: 7234 NW. 34th Street, Miami, FL 33122
Date Revoked: March 8, 1987
Reason: Failed to maintain a valid surety bond

License Number: 2168
Name: International Movements, Inc.
Address: 4965 Mountain Road, Pasadena, MD 21122
Date Revoked: March 13, 1987
Reason: Failed to maintain a valid surety bond.

**Robert G. Drew,**

*Director, Bureau of Domestic Regulation.*

[FR Doc. 87–7518 Filed 4–3–87; 8:45 am]

BILLING CODE 6730–01–M

## FEDERAL RESERVE SYSTEM

**[Docket No. R–0599]**

### Fee Schedules for Federal Reserve Bank Services

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Notice.

**SUMMARY:** The Board has approved a fee schedule for book-entry securities services.

**EFFECTIVE DATE:** May 1, 1987.

**FOR FURTHER INFORMATION CONTACT:** Charles W. Bennett, Assistant Director (202–452–3442), Gerald D. Manypenny, Manager (202–452–3954), or Donna DeCorleto, Senior Analyst (202–452–3954) Division of Federal Reserve Bank Operations; Joseph R. Alexander, Senior Attorney (202–452–2489), Legal Division; or, for the hearing impaired *only*, Earnestine Hill or Dorothea Thompson, Telecommunications Device for the Deaf (TDD) (202–452–3544); Board of Governors of the Federal Reserve System, Washington, DC 20551.

**SUPPLEMENTARY INFORMATION:** On November 5, 1986, the Board approved the 1987 fee schedules for priced services of the Federal Reserve Banks. 51 F.R. 42630 (November 25, 1986). At that time, the Board postponed any changes to the book-entry fee schedule until the second quarter of 1987 "because recent operational changes, such as the mid-1986 expansion of book-entry mortgage-backed securities to all Reserve Banks, have increased the cost of the book-entry service," and the Board did not believe that the data available in November, 1986, were adequate for making pricing decisions for all of 1987.

Although there is still some uncertainty about costs and volumes, the Board believes that it is appropriate to act on proposed changes to the book-entry service at this time. Without repricing, Reserve Banks would recover 122 per cent of the costs (including a private sector adjustment factor) of providing the book-entry service.

Based on the information currently at hand, the Board has approved reductions in four components of the fee structure for the federal agency book-entry securities service. The Board expects that the new fee schedule will result in an annualized recovery rate of 105 per cent (110 per cent for all of 1987). This schedule reduces the fee charged for originating an on-line securities transfer from $3.00 to $2.25 and reduces the fee charged for originating or receiving an off-line securities transfer from $10.00 to $7.00. These fees are identical to those charged by the Treasury Department for transfers of Treasury book-entry securities.

The Board has also approved replacing the $1.00 to $5.00 graduated on-line origination fee, which has been in effect only at the Federal Reserve Bank of New York, with the $2.25 fee. This graduated fee never achieved its

intended goal of encouraging service users to send securities transfers during non-peak volume periods.

The schedule also reduces one of the two maintenance fees, the per-issue-per-account fee, $.50 per-issue to $.45. The other maintenance fee, the $15.00 account maintenance fee, would remain unchanged. The Treasury Department does not charge issue or account maintenance fees.

The fees approved by the Board are set out in the attachment.

By order of the Board of Governors of the Federal Reserve System, March 31, 1987.

**James McAfee**

*Associate Secretary of the Board.*

FEDERAL AGENCY BOOK-ENTRY SECURITIES FEE SCHEDULE, EFFECTIVE MAY 1, 1987

| Component | Transaction | Fee |
|---|---|---|
| On-Line Transfers Originated | Per Transfer | $2.25 |
| Off-Line Transfers: | | |
| Originated | Per Transfer | 7.00 |
| Received | Per Transfer | 7.00 |
| Account Maintenance | Per Account | 15.00 |
| Issues in Accounts | Per Issue | .45 |

[FR Doc. 87-7452 Filed 4-3-87; 8:45 am]

BILLING CODE 6210-01-M

## Atico Financial Corp.; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 24, 1987.

A. **Federal Reserve Bank of Atlanta** (Roberta E. Heck, Vice President), 104 Marietta Street NW., Atlanta, Georgia 30303:

1. *Atico Financial Corporation*, Miami, Florida; to become a bank holding company by acquiring 99.2 percent of the voting shares of Atico Savings Bank, Miami, Florida (formerly Peninsula Federal Savings and Loan Association), and 93.5 percent of the voting shares of Intercontinental Bank, Miami, Florida.

In connection with this application, Applicant also proposes to acquire Pan American Mortgage Corp., Miami, Florida, and thereby engage in making and servicing commercial and residential loans, pursuant to § 225.25(b)(1) of the Board's Regulation Y. These activities will be conducted throughout the State of Florida.

Board of Governors of the Federal Reserve System, March 31, 1987.

**James McAfee,**

*Associate Secretary of the Board.*

[FR Doc. 87-7453 Filed 4-3-87; 8:45 am]

BILLING CODE 6210-01-M

## Continental Illinois Corp. et al., Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 24, 1987.

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Continental Illinois Corporation*, Chicago, Illinois; to engage *de novo* through its subsidiary, Continental Capital Management Corporation, Chicago, Illinois, in acting as an investment or financial advisor to the institutional market including corporate, foundation, government agency and union retirement plans pursuant to § 225.25(b)(4) of the Board's Regulation Y.

2. *Illinois Regional Bancorp, Inc.*, Elmhurst, Illinois, to engage de novo through its subsidiary, Illinois Regional Mortgage Corporation, Elmhurst, Illinois, in mortgage banking activities pursuant to § 225.25(b)(1)(iii) of the Board's Regulation Y. These activities will be conducted in the states of Illinois, Indiana and Wisconsin.

Board of Governors of the Federal Reserve System, March 31, 1987.

**James McAfee,**

*Associate Secretary of the Board.*

[FR Doc. 87-7454 Filed 4-3-87; 8:45 am]

BILLING CODE 6210-01-M

### Gulf and Southern Financial Corp. et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than April 24, 1987.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President), 104 Marietta Street NW., Atlanta, Georgia 30303:

1. *Gulf & Southern Financial Corporation,* Fort Myers, Florida; to acquire 100 percent of the voting shares of Community National Bank of Sarasota County, Venice, Florida, a *de novo* bank.

B. **Federal Reserve Bank of St. Louis** (Randall C. Summer, Vice President), 411 Locust Street, St. Louis, Missouri 63166:

1. *Mark Twain Bancshares, Inc.,* St. Louis, Missouri; to acquire at least 87 percent of the voting shares of Edwardsville National Bank and Trust Company, Edwardsville, Illinois.

C. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President), 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Baron II Bancshares, Inc.,* White Bear Lake, Minnesota; to become a bank holding company by acquiring 95.5 percent of the voting shares of Security State Bank of Deer Creek, Deer Creek, Minnesota.

2. *Market Bancorporation, Inc.,* New Market, Minnesota; to become a bank holding company by acquiring 83 percent of the voting shares of First State Bank of New Market, New Market, Minnesota. Comments on this application must be received by April 27, 1987.

Board of Governors of the Federal Reserve System, March 31, 1987.

**James McAfee,**

*Associate Secretary of the Board.*

[FR Doc. 87-7455 Filed 4-3-87; 8:45 am]

BILLING CODE 6210-01-M

### Change in Bank Control Notice; Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 21, 1987.

A. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Roy O. Nicholson,* Elberfield, Indiana; to acquire 4 percent of the voting shares of The Elberfield State Bank, Elberfield, Indiana.

Board of Governors of the Federal Reserve System, March 31, 1987.

**James McAfee,**

*Associate Secretary of the Board.*

[FR Doc. 87-7456 Filed 4-3-87; 8:45 am]

BILLING CODE 6210-01-M

## GENERAL SERVICES ADMINISTRATION

### Review of Expiring Information Collection (3090-0066)

**DEPARTMENT:** Teleprocessing Services Branch (KECT).

**ACTION:** Notice of request to the Office of Management and Budget to extend an expiring information collection.

**SUMMARY:** Under the Paperwork Reduction Act of 1980 (44 U.S.C. ch. 35), GSA seeks public comment on its proposal to extend the collection entitled "Contractor's Report of Services Ordered/Delivered."

**ADDRESSES:** Send comments to Bruce McConnell, GSA Desk Officer, Room 3235, NEOB, Washington, DC 20503, and to Rodney P. Lantier, GSA Clearance Officer, General Services Administration (CAID), Washington, DC 20405.

**FOR FURTHER INFORMATION TELEPHONE:** Maxine Andewelt, 566-1275.

Purpose: GSA collects the information to establish volume discounts, to make sure that services delivered match invoices, to confirm payment, and to project usage for budget hearings.

Annual Reporting Burden: Respondents, 45; Responses, 180; burden hours, 720.

Copy of Proposal: Readers may obtain a copy of the proposal by writing the Directives and Reports Management Branch (CAID), Room 3015, GS Bldg., Washington, DC 20405, or by telephoning (202) 566-0668.

Dated: March 26, 1987.

**Rodney P. Lantier,**

*Acting Director, Information Management Division.*

[FR Doc. 87-7466 Filed 4-3-87; 8:45 am]

BILLING CODE 6820-25-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Alcohol, Drug Abuse, and Mental Health Administration

### Establishment of the Small Business Research Review Committee, NIMH

Pursuant to the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92-463, 86 Stat. 770-776) and the Anti-Drug Abuse Act of 1986 (Pub. L. 99-570, section 501(j)), the Administrator, Alcohol, Drug Abuse, and Mental Health Administration (ADAMHA), announces the establishment, effective April 24, 1987 of the following committee:

Small Business Research Review Committee, NIMH.

The duration of this committee is continuing unless formally determined by the Administrator, ADAMHA, that termination would be in the best public interest.

Dated: March 31, 1987.

**Donald Ian Macdonald, M.D.,**

*Administrator, Alcohol, Drug Abuse, and Mental Health Administration.*

[FR Doc. 87-7491 Filed 4-3-87; 8:45 am]

BILLING CODE 4160-20-M

## Food and Drug Administration

**[Docket No. 87M-0077]**

### Biophysic Medical, Inc.; Premarket Approval of Biophysic Picolas® ND:YAG Ophthalmic Laser

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing its approval of the application by Biophysic Medical, Inc., Pleasant Hill, CA, for premarket approval, under the Medical Device Amendments of 1976, of the Biophysic Picolas® Nd:YAG Ophthalmic Laser. After reviewing the recommendation of the Ophthalmic Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant of the approval of the application.

**DATE:** Petitions for administrative review by May 6, 1987.

**ADDRESS:** Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Philip J. Phillips, Center for Devices and Radiological Health (HFZ-460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-8221.

**SUPPLEMENTARY INFORMATION:** On August 11, 1986, Biophysic Medical, Inc., Pleasant Hill, CA 92708, submitted to CDRH an application for premarket approval of the Biophysic Picolas® Nd:YAG Ophthalmic Laser. The Biophysic Picolas® Nd:YAG Ophthalmic Laser is a neodymium:yttrium-aluminum-garnet (Nd:YAG ophthalmic laser that is indicated for discission of the posterior capsule of the eye (posterior capsulotomy) and discission of pupillary membranes (pupillary membranectomy) in aphakic and pseudophakic eyes.

On October 20, 1986, the Ophthalmic Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On February 17, 1987, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact Philip J. Phillips (HFZ-460), address above.

### Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before May 6, 1987, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554-555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: March 25, 1987.

**John C. Villforth,**

*Director, Center for Devices and Radiological Health*

[FR Doc. 87-7512 Filed 4-3-87; 8:45 am]

BILLING CODE 4160-01-M

**[Docket No. 87M-0076]**

### Trimedyne, Inc.; Premarket Approval of the Laserprobe-PLR™ Flex and Laserprobe-PLR™ Plus Catheters and Optilase™ Model 900 Contact Laser Model

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing its approval of the application by Trimedyne, Inc., Santa Ana, CA, for premarket approval, under the Medical Device Amendments of 1976, of the Laserprobe-PLR™ Flex and Laserprobe-PLR™ Plus Catheters and Optilase™ Model 900 Contact Laser System. After reviewing the recommendation of the Circulatory System Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant of the approval of the application.

**DATE:** Petitions for administrative review by May 6, 1987.

**ADDRESS:** Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Lynne A. Reamer, Center for Devices and Radiological Health (HFZ-450), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7559.

**SUPPLEMENTARY INFORMATION:** On September 2, 1986, Trimedyne, Inc., Santa Ana, CA 92705, submitted to CDRH an application for premarket approval of the Laserprobe-PLR™ Flex and Laserprobe-PLR™ Plus Catheters and Optilase™ Model 900 Contact Laser System. The catheter and laser are indicated via percutaneous use or surgical cutdown under fluorscopic guidance as an adjunct to routine peripheral balloon dilatation techniques for the treatment of occlusive peripheral artery disease in male and female adult patients. Specifically, use of this device is recommended principally for, but is

not limited to, cases difficult or impossible to treat with balloon angioplasty. The device is not indicated for use in cases where success of reestablishment of flow could reasonably be expected with the use of routine angioplasty techniques.

On January 16, 1987, the Circulatory System Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On February 27, 1987, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch ( address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact Lynne A. Reamer (HFZ–450), address above.

### Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall indentify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before May 6, 1987, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554–555, 571 (21 U.S.C. 360e(d), 360j(h)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: March 25, 1987.

**John C. Villforth,**

*Director, Center for Devices and Radiological Health.*

[FR Doc. 87–7511 Filed 4–3–87; 8:45 am]

BILLING CODE 4160–01–M

## Health Care Financing Administration

**[IOA–008–N]**

## Task Force on Technology-Dependent Children; Meeting

**AGENCY:** Health Care Financing Administration (HCFA), HHS.

**ACTION:** Notice of public meeting.

**SUMMARY:** In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), this notice announces a meeting of the Task Force on Technology-Dependent Children.

**DATE:** The meeting will be held on May 6, 1987 from 8:30 a.m. to 5:00 p.m., and on May 7, 1987 from 8:30 a.m. to 2:30 p.m., e.s.t. The meeting will be open to the public.

**ADDRESS:** The meeting will be held in the Quality Inn, Pentagon City, 300 Army-Navy Drive, Arlington, Virginia.

**FOR FURTHER INFORMATION CONTACT:** Bill Pickens, Executive Director, Department of Health and Human Services, Room 4414 HHS North Building, 330 Independence Avenue, SW., Washington, DC 20201, (202) 245–0070.

**SUPPLEMENTARY INFORMATION:**

### Purpose

The Task Force on Technology-Dependent Children, established under section 9520 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L. 99–272), will investigate alternatives to institutional care for technology-dependent children. Technology-dependent children are those with chronic conditions requiring continuing use of medical technology.

The Task Force must report to the Secretary of Health and Human Services, the Administrator of the Health Care Financing Administration (HCFA), and to the Congress concerning alternatives to institutional care for technology-dependent children. The Task Force must develop recommendations designed to:

(1) Identify barriers that prevent the provision of appropriate care in a home or community setting to meet the special needs of technology dependent children; and

(2) Recommend changes in the provision and financing of health care in private and public health care programs (including appropriate joint public private initiatives) so as to provide home and community-based alternatives to the institutionalization of technology-dependent children.

The Task Force will address fully the two specified goals before it addresses any other questions. To the extent that time and resources permit, the Task Force may develop recommendations that would address additional concerns regarding technology-dependent children. The Task Force recommendations are intended to be used only at the option of the Department of Health and Human Services and the Congress.

### Agenda

Agenda items for the meeting will include presentations from invited experts of professional organizations that impact on technology-dependent children. The Task Force is seeking to identify barriers, concerns and recommendations. Also, a Task Force business meeting will be conducted.

The public is invited to present testimony to the Task Force. We request those wishing to testify to contact the Task Force by April 17, 1987.

Agenda items are subject to change as priorities dictate.

(Sec. 10(a)(2) of Pub. L. 92–463, as amended (5 U.S.C. App. I, sec. 1–15) and sec. 9520 of Pub. L. 99–272 (42 U.S.C. 1396a note); 45 CFR Part 11)

Dated: March 18, 1987.

**William L. Roper,**

*Administrator, Health Care Financing Administration.*

[FR Doc. 87–7494 Filed 4–3–87; 8:45 am]

BILLING CODE 4120–01–M

[BERC-362-NR]

## Medicare Program; Criteria for Medicare Coverage of Heart Transplants

**AGENCY:** Health Care Financing Administration (HCFA), HHS.

**ACTION:** Notice of HCFA ruling.

**SUMMARY:** This notice extends Medicare coverage to heart transplantations when furnished by participating facilities that meet specific criteria, including patient selection criteria. We are extending coverage to heart transplants based on the results of the National Heart Transplant Study and our subsequent determination that heart transplants are a medically reasonable and necessary service when specific criteria are met. Because the HCFA Ruling HCFAR 80–1 excluded heart transplants from coverage under that Medicare program, we are issuing this notice as a new HCFA ruling. It will rescind HCFAR 80–1 and set forth the new coverage policy for heart transplants.

**EFFECTIVE DATE:** This notice is effective on April 6, 1987, and permits, under certain circumstances, coverage of heart transplants retroactive to October 17, 1986, which was the date of publication of the proposed notice. That notice set forth, for public comment, proposed criteria for coverage of heart transplants. Section VII of this notice contains a discussion of the effective dates in detail.

**FOR FURTHER INFORMATION, CONTACT:** Barton McCann, M.D., (301) 594–9370.

**SUPPLEMENTARY INFORMATION:**

### I. Background

In November 1979, Medicare began paying for heart transplantation procedures performed for Medicare beneficiaries at Stanford University Medical Center. This was an interim decision, based on preliminary findings by the Public Health Service (PHS) regarding the safety and efficacy of heart transplants performed at that center.

Upon review of Medicare coverage of heart transplants, we determined that the issues were much more complex than originally thought and that adequate data did not exist to resolve many of them. Consequently, the Secretary of HHS announced a decision to exclude heart transplants from Medicare coverage, with the exception of a very few patients previously selected for and awaiting transplantations. That decision was announced June 12, 1980 by the Secretary and published as a notice of HCFA Ruling (HCFAR 80–1) in the **Federal Register** on August 6, 1980 (45 FR 52296).

Accompanying the decision to exclude heart transplants from Medicare coverage was an announcement that HCFA, in close cooperation with the PHS, would conduct a broad study of heart transplants. On January 22, 1981, we published a notice in the **Federal Register** (46 FR 7072) that described the study in detail and solicited applications from hospitals and medical centers wishing to participate. We awarded the contract for the National Heart Transplant Study to the Battelle Human Affairs Research Centers of Seattle, Washington.

As part of the January 1981 notice, we stated that when the results of the study were analyzed, we would publish a proposed decision regarding Medicare coverage and would give the public an opportunity to comment on our proposal before developing a final policy. Subsequently, on October 17, 1986, we published a notice in the **Federal Register** (51 FR 37164) that proposed Medicare coverage of heart transplants when furnished by participating facilities that meet special criteria. The notice also provided a 30-day public comment period.

### II. Provisions of the Proposed Notice

In the proposed notice, we stated that after analyzing the findings of the Battelle study and consulting with PHS, we had determined that, for Medicare coverage purposes, heart transplants are medically reasonable and necessary when performed in facilities that meet certain criteria. In accordance with the proposal, facilities that wish to obtain this coverage for their Medicare patients would be required to submit an application and supply documentation showing their initial and ongoing compliance with each of the criteria. For each facility for which an application is approved, we would cover under Medicare Part A (Hospital Insurance) and Part B (Supplementary Medical Insurance) medically reasonable and necessary services associated with the actual transplantation and surgery (including organ acquisition), and any covered services needed as followup care. We noted that post-transplant care would not include outpatient, self-administrable immunosuppressive drugs, such as cyclosporine, since Medicare coverage of self-administered drugs is excluded under section 1861(s)(2) of the Social Security Act (the Act).

#### *A. Criteria for Facilities*

We stated that we would require facilities to meet criteria relating to the following areas:

- Patient selection.
- Patient management.
- Commitment.
- Facility plans.
- Experience and survival rates.
- Maintenance of data.
- Organ procurement.
- Laboratory services.

We noted that the criteria we proposed may need to be updated periodically to recognize further developments in the technology and procedures for heart transplantations. We stated that after three years of experience with the use of the criteria, we would examine the appropriateness of continuing to use any criteria.

#### *B. Process for Review and Approval of Facilities*

Under the proposal, the approval of facilities would be based on a careful review of the materials submitted regarding their experience, survival rates and expertise, as well as their commitment to the heart transplant program. We proposed to conduct the review with the aid and advice of a panel of non-Federal experts in such relevant fields as cardiology, cardiovascular surgery, organ transplantation, immunosuppression and health care resource utilization. The experts would report to us on their findings with respect to individual applications and would provide the basis for decisions as to the approval or disapproval of such applications.

In approving facilities, we would compare the facility's submission against the criteria specified in this notice. The approval granted would be for a three year period. Extensions of approval would require submission of a continuation application and would not be automatic.

Finally, we noted that, in certain limited cases, exceptions to the strict criteria proposed might be warranted. We invited comments on the need for an exceptions policy and the structure this policy might take.

#### *C. Application Procedure*

In the proposed notice, we stated that we would accept and begin to review applications from facilities that believe they are qualified based on the proposed criteria. However, we specified that the applications would be approved only on the basis of the criteria to be published in our final notice. We stated that to the extent that the proposed criteria are modified as a

result of public comment, we would give facilities that submitted applications prior to the date of the final notice the opportunity to submit any necessary revisions and additions to their applications.

### III. Discussion of Comments

We received 158 timely items of correspondence in response to the proposed notice. Of these, 55 were from transplant centers, 13 were from professional associations, one was from a State governor, seven were from members of Congress, three were from State and local government agencies, 15 were from individual health professionals, 31 were from transplant patients, one was from a Medicare Part A intermediary, three were from heart transplant consortia, one was from an organ procurement agency, and 30 were from private citizens. The comments ranged from general support or opposition to the proposed coverage of heart transplants to very specific questions or comments regarding the proposed criteria. With the exception of comments relating to the impact analysis, a summary of the comments, and our responses to them, follow. The comments relating to the impact are addressed in the Impact Analysis in section VI of this notice.

*A. Extension of Comment Period*

*Comment:* Several commenters recommended extending the 30-day comment period to allow more extensive public debate of the complex issues involved in designating approved facilities for Medicare coverage purposes.

*Response:* We have not accepted this comment because we believe that our need to publish a final notice and institute coverage outweighs the benefits that would be obtained by a longer comment period. Also, our criteria will be under continual review and we will make any changes that become necessary as a result of new information and continued progress in the field of cardiac transplantation.

*B. National Heart Transplant Study*

*Comment:* One commenter suggested that basing the guidelines for designation of transplant centers on information derived from the 1984 National Heart Transplant Study is not prudent, since the data are significantly outdated.

*Response:* When we formulated the criteria, we used the best information available, including information more recent than that presented in the National Heart Transplant Study. The proposed criteria take into consideration advances in the cardiac transplantation field and reflect discussions with experts in cardiology, cardiovascular surgery, cardiac transplantation, biostatistics and experts familiar with the data bank of the International Society for Heart Transplantation. We realize that the indicators to measure the safety and efficacy of heart transplantation will continue to evolve, and we are prepared to update our criteria as further developments in heart transplantation technology occur.

*Comment:* One commenter was concerned that the six transplant facilities that previously participated in government-sponsored heart transplant studies would receive favored status.

*Response:* All facilities must meet these final published criteria. No facilities have been pre-selected. We will not know which facilities will qualify until after their applications have been received and reviewed.

*C. Opposition to Coverage of Heart Transplants*

*Comment:* Several commenters were opposed to the coverage of heart transplants under Medicare. The reasons for opposition ranged from concerns over the cost of the procedure to a concern that the coverage of heart transplants discriminates against other therapies such as whole body health improvement programs.

*Response:* We do not find the commenters, arguments against coverage persuasive. Under Medicare, payment must be made for services that are reasonable and necessary and otherwise covered under the program. We have determined that when heart transplants are performed by facilities that meet the criteria we specify, such services are medically reasonable and necessary. The discussion of Medicare coverage of other forms of therapy is beyond the scope of this notice.

*D. Other Coverage Issues*

*Comment:* Several commenters requested that the notice be amended to allow coverage of all types of transplants.

*Response:* We wish to assure these commenters that we are not ignoring the issue of coverage of other types of transplants under Medicare, even though they were not the subject of this notice. As part of our continuing review of Medicare coverage, we are reviewing the medical literature and research available on several other types of transplants. If and when such transplants appear to be at a point where coverage under Medicare would be feasible, we will consider covering them as well. In response to a question on Medicare coverage of combined heart-lung transplants, we note that this procedure is considered experimental and therefore is not covered by Medicare.

*Comment:* Several commenters asked that special rules be established or that mention be made of the differences between adult and pediatric heart transplants, expressing the concern that adoption of the provisions of the notice by other third parties could adversely affect pediatric heart transplant programs.

*Response:* We believe that the commenters have raised a valid concern regarding the possible adverse effects of inappropriate adoption of our provisions by other third parties. However, we believe that making such distinctions in this notice is not appropriate. We expect that facilities performing pediatric heart transplants may well have selection criteria that differ from those used for their adult transplant patients. There is nothing in this notice to prevent this, nor will such differentiation between different types of patients adversely affect such a facility's approval to be a heart transplant center.

Very few, if any, pediatric patients are likely to qualify for coverage of a heart transplant under Medicare. However, we add our admonition to that of these commenters that other third parties who may choose to adopt requirements similar to those of this notice for their own programs recognize that it applies primarily to adults, and should be modified or otherwise adapted for programs that may involve children.

*Comment:* Several commenters asked that artificial hearts be covered when used as a "bridge" for a person awaiting a donor heart.

*Response:* We have not accepted this suggestion. Several months ago we published an instruction indicating that artificial hearts and ventricular assist devices were not covered under Medicare, either when used as a replacement for the individual's natural heart, or when used as a "bridge to transplant." We have not seen anything since that time that would convince us to change that policy. These devices continue to be considered investigational by the Food and Drug Administration. We will, of course, continue to monitor the research in this area with a view toward determining whether that policy should be amended.

*E. Immunosuppressive Drugs*

*Comment:* Numerous commenters objected to the lack of coverage of immunosuppressive drugs, despite the explanation in the proposed notice that

the Medicare statute did not permit coverage of outpatient prescription drugs that can be self-administered. One commenter, aware of the recent legislation described below, asked that such coverage be extended to permanently cover such drugs.

*Response:* On October 21, 1986, four days after the date of publication of the proposed notice, legislation was enacted to provide for the coverage of immunosuppressive drugs under Medicare, beginning January 1, 1987, for up to one year following the date of a covered Medicare transplant. Coverage for immunosuppressive drugs was contained in section 9335(c) of the Omnibus Budget Reconciliation Act of 1986 (Pub. L. 99–509), and amended section 1861(s)(2) of the Act.

We have implemented these new coverage provisions through the issuance of instructions to hospitals, carriers, and fiscal intermediaries. We also are preparing a Notice of Proposed Rulemaking to address specifically the coverage of immunosuppressive drugs for all Medicare covered transplants. We note that we cannot change the statutory provision to provide coverage of immunosuppressive drugs for more than a year. That would require a further amendment to the law, and would have to be made by Congress.

*F. Eligibility*

*Comment:* Several commenters objected to the waiting period of 29 months between the onset of a disability and the beginning of Medicare coverage for a disabled individual as being too long.

*Response:* This requirement is based on sections 223(c)(2) and 226(b)(2)(A) of the Act, and is not a requirement adopted specifically for heart transplant recipients. Under section 226(b)(2)(A) of the Act, a Social Security disability beneficiary must receive disability insurance benefits under Social Security for 24 months before becoming entitled to Medicare benefits. In addition, section 223(c)(2) of the Act provides that the beneficiary must serve a five-month waiting period from the date of onset of the disability before cash benefits begin. While it is true that this statutory waiting period for Medicare coverage of the disabled represents a disadvantage to an individual who requires a transplant before completion of the waiting period, we would remind commenters that the coverage of heart transplants is an administrative decision, and no statutory provisions regarding either coverage or eligibility have changed.

*Comment:* One commenter suggested that successfully transplanted recipients who return to work should continue to receive transplant related services under Medicare.

*Response:* Under provisions of the Social Security Act, a beneficiary who is no longer disabled and therefore no longer receiving disability benefits is no longer entitled to receive benefits under Medicare. Any changes in these provisions would have to be legislated by Congress, and are outside the scope of our authority.

*G. Facility Criteria*

*Comment:* Several commenters objected to the use of any facility criteria, claiming that limiting coverage only to selected centers was anti-competitive and would restrain the development of such centers, to the detriment of those who require heart transplants.

*Response:* In the case of heart transplants, we have determined that in carefully selected patients, managed according to specific protocols by experienced medical teams at institutions with a substantial dedication to and experience with the procedure, cardiac transplantation has resulted in major increments in life expectancy and in improvements in the quality of life. We recognize that the proposed criteria for experience, survival rates, and facility commitment are somewhat restrictive. However, our goal in requiring facilities to meet certain criteria is not to restrict competition but to maintain the quality of services required by this complex procedure, provide coverage of the benefit at facilities and under conditions that have been shown to be safe and effective, and allow entry of new, qualified providers. We believe this approach is justified, particularly in view of the typical relationship between experience and quality of services. Facilities will continue to be approved as they come to meet the facility criteria. There will be neither a cut off date for receipt of applications nor a limit on the number of approved facilities, and hospitals that may be considering initiating a heart transplant program may do so with the clear understanding of what criteria they will have to meet.

*Comment:* Several commenters were opposed to any facility criteria, arguing that all hospitals that choose to do heart transplants should be allowed to do so and be paid by Medicare.

*Response:* We have not accepted this approach. As has been mentioned above, there are good reasons for the use of specialized criteria to select facilities in which heart transplants may be performed safely and efficaciously. Again, the approval process will remain open, and many Medicare-approved hospitals that do not now meet the criteria may someday do so. Also, we are committed to conducting a full scale reevaluation of the need for any criteria after a three-year period.

*Comment:* Several commenters stated that the proposed notice established a regrettable precedent in identifying only certain institutions as being eligible for reimbursement for specific procedures. A concern was expressed that the rationale would be applied inappropriately to other services such as cataract surgery, major joint replacements or routine open heart surgery.

*Response:* We do not have any plans at present to apply criteria as outlined for heart transplants to other types of surgery. If such plans were put into effect, we would do so for reasons of assuring quality of care and only after we provided the public with an opportunity to comment.

*Comment:* One commenter, opposed to limiting coverage of heart transplants to facilities that meet certain criteria, suggested that it would be appropriate for us to develop guidelines for fiscal intermediaries, carriers, and Peer Review Organizations to utilize in their individual coverage determinations.

*Response:* We have not accepted this suggestion. We believe that the most appropriate means of assuring that Medicare beneficiaries receive heart transplants under conditions that are safe and effective is to provide for coverage only at those facilities with demonstrated experience and success.

*Comment:* Several commenters objected to the use of any criteria and expressed the opinion that the limitations contained in the proposed notice go well beyond our authority under the Social Security Act.

*Response:* We disagree. Under section 1862(a)(1) of the Act, payment may not be made under the Medicare program for services that are "not reasonable and necessary for the diagnosis or treatment of illness or injury." This provision prohibits payment for services that are not recognized as effective and proven treatment for a given medical condition and that are experimental or investigational in nature. In the case of heart transplants, we have determined that in carefully selected patients, managed according to specific protocols by experienced medical teams at institutions with a substantial dedication to and experience with the procedure, cardiac transplantation has resulted in major increments in life expectancy and in improvements in the quality of life. Such practice has become

widely accepted by the medical profession. Thus, cardiac transplantation under such circumstances, and only under such circumstances, is safe, effective and widely accepted; that is, reasonable and necessary.

*Comment:* One commenter recommended that we make the principles of the proposed notice a part of the hospital conditions of participation rather than a coverage notice so that our staff and the expert panel would not be bogged down in a burdensome review process.

*Response:* We have not accepted this recommendation because to do so would be inconsistent with our determination that heart transplants can be considered reasonable and necessary only when performed in qualified facilities that meet certain criteria. Further, we believe that the conditions of participation procedures are too cumbersome for such a narrow purpose coverage decision.

*Comment:* Several commenters suggested that we expand our facility guidelines to include additional criteria. For example, it was recommended that we require the availability of a neurologist for establishing criteria for brain death and that the facility be a full service tertiary care center.

*Response:* We do not agree with these suggestions. We believe our guidelines are sufficient to initiate the heart transplant program. Any revisions that may be necessary in the future will be made at that time.

*Comment:* One commenter stated that, with the exception of experience and survival rates, the criteria are unduly broad and general, and lack objectivity. A concern was expressed that this lack of specificity and objectivity would result in an unjustified denial of approval.

*Response:* We disagree that our lack of specificity will result in unjustified denials. We expect applicant facilities to submit all relevant information about their program that they believe demonstrates their capabilities to provide safe and effective heart transplants. Details of criteria, such as patient protocols, are not provided because we recognize that there are acceptable variations in practice in different regions of the country.

*Comment:* One commenter suggested that the criteria for transplant facilities be reviewed annually and asked if there were any "hidden" criteria that already exist or that will be designated later.

*Response:* We will review continually the transplant facility criteria and publish any revisions or changes that we find necessary. There are no "hidden" criteria. At this time we cannot predict what changes may be made in the criteria, but the public should understand that whenever necessary changes are identified, they will be published in the **Federal Register** and an opportunity will be given for public comment.

*Comment:* One commenter suggested that a graduate medical education (GME) program be in place or that a university affiliation be maintained before a facility could become an approved transplant center.

*Response:* We disagree with this suggestion. Although most centers that qualify probably will have a GME program, we do not believe it is essential to a center that meets all the facility criteria. Further, we do not wish to restrict the technology of heart transplantation to academic institutions.

*H. Exceptions to Facility Criteria*

*Comment:* In the proposed notice, we indicated that in certain limited cases, exceptions to the strict criteria might be warranted. We invited comments on the need for an exceptions policy and the structure such a policy might take. The majority of the comments recommended exceptions for centers which did not meet the experience criteria but which were geographically distant from other centers, were members of a consortium, had significant experience in other organ transplants, or had higher survival rates over a period of time less than two years. Many of the commenters recommended provisional approval with close monitoring of those centers that lacked the required experience but met the other criteria. Several commenters recommended incorporating greater flexibility into the criteria, thereby removing the need for an exceptions process. One commenter expressed opposition to the incorporation of formal comprehensive guidelines into an exceptions process and recommended the granting of exceptions based on merit. Several others recommended that the exceptions process rely on critical assessments by the expert review panel to identify institutions that can demonstrate their ability to provide satisfactory care to heart transplant patients. It was pointed out that it would be difficult to anticipate or articulate in the final notice all of the alternatives that might provide reasonable assurance that a facility may offer safe and effective heart transplants. It was proposed that we rely on the panel of experts to recommend exceptions to the specific criteria rather than attempt to describe all of the acceptable variations. One commenter recommended that no exceptions should be made until the criteria had been in place for 18 months. Finally, one commenter recommended that exceptions be granted for patients in life or death situations who are transplanted in non-approved facilities.

*Response:* On the basis of the comments received, we believe that there will be a need to make some limited exceptions to the facility criteria if there is justification. Further, we believe that, in each case in which an exception to one or more criteria is justified, we must ensure that our objectives of ensuring safety and efficacy are met. We agree with the commenters who recommended that we rely on the professional expertise and judgment of the expert panel in determining whether heart transplants may be performed safely and effectively in a given facility. However, as we have explained in response to the comments regarding the functions of the panel (see section III.U. of this notice), we intend to solicit individual expert consultants. Since we have decided to use the advice of consultants in making exceptions, we have not developed specific alternative criteria for facilities that do not meet all the criteria. The exceptions will be limited to specific cases which, taking into consideration the consultants' professional judgments, would not compromise the use of facility criteria as a measure of the facility's commitment and quality of care. All decisions regarding approval or disapproval will be made by the Administrator of HCFA after considering the findings and recommendations of the consultants.

Further, we have identified those circumstances for which exceptions may not be made. Specifically, facilities whose transplant programs have been in existence for less than two years will not be approved. Geographic considerations will not be taken into account. Applications from consortia will not be approved. The basis of our decision to restrict exceptions for these three circumstances is described in our analysis of the comments we received on each of those subjects.

We have rejected the recommendations we received to grant conditional approvals to facilities that do not meet the required experience criteria. Such approvals are not consistent with the intent of the criteria, which is to ensure that Medicare beneficiaries in need of heart transplants receive them only in facilities with substantial dedication to and experience with the procedure. While we agree that significant experience in other organ transplants is of value and should be taken into account in the review of a facility's

application, we do not believe that other organ transplants are sufficiently analogous to heart transplants to permit an exception to the criteria based on the substitution of that experience for the required experience in heart tranplants. Finally, no exceptions will be granted for patients in "life or death" situations who are transplanted in non-approved centers. In view of the fact that any patient in need of a heart transplant could be considered to be in a "life or death" situation, the granting of exceptions on this basis would undermine our determination that heart transplants can be considered reasonable and necessary only when provided in certain qualified facilities. Our determination took into account the fact that, in spite of the very poor prognosis and often grave clinical condition of potential heart transplant recipients, the onset and progression of the underlying heart disease is rarely, if ever, so rapid that there is insufficient time for a referral to and, if needed, a transplant by an approved facility with extensive experience and demonstrated successful outcomes.

*Comment:* Two commenters suggested that Medicare risk contractors be excepted from a requirement that the heart transplants provided for their enrollees be performed in Medicare approved transplant facilities.

*Response:* Under the provisions of section 1876 of the Act, an organization with a risk contract (for example, a health maintenance organization or competitive medical plan) must provide all covered Medicare services to its enrollees. This will include a heart transplant for any enrollee in need of this complex procedure. Although there is no general prohibition against risk organizations providing noncovered services to Medicare beneficiaries, we believe that the circumstances present here would ordinarily preclude a risk organization from furnishing a heart transplant to an enrollee in other than a Medicare approved facility. Section 1876(i)(6) of the Act provides that any risk organization that fails substantially to provide medically necessary services covered by Medicare is subject to a civil money penalty if that failure has adversely affected or has a substantial likelihood of adversely affecting the beneficiary. In our view, a risk organization that substituted a noncovered heart transplant for a heart transplant in a Medicare approved facility could be found to violate this provision in light of the greater assurance of favorable outcome available in the Medicare approved facility. This conclusion is not necessarily affected by the patient's consent to the substitution of noncovered services, since it is unlikely that the beneficiary would fully understand the implications of the substitution. When the risk organization uses a facility approved by Medicare, it may agree with the facility as to the amount of the charges, or it may ask Medicare to pay the facility the DRG payment plus pass throughs under section 1876(g)(4) of the Act, for which the organization would then be liable to Medicare.

*Comment:* One commenter, while agreeing with the proposed experience and survival rates outlined in the proposed notice, raised the issue of whether some different rates should be applied to facilities engaged in clinical research on patients who fall outside the patient selection guidelines (for example, those over age 60). The commenter pointed out that such research is necessary to extend the coverage of heart transplants to those who are not currently acceptable candidates for such surgery. One commenter recommended that facilities be allowed some limited flexibility in applying their patient selection criteria. One other commenter questioned whether the patient selection criteria applied to all patients and pointed out that this issue has significant implications for the ability of transplant centers to engage in innovation and experimentation.

*Response:* These comments raise an important issue that requires some elaboration and explanation. It is not our intent to limit the ability of transplant facilities to engage in innovation and experimentation. All patients undergoing heart transplantation at the facility must enter into the statistics reported, but if the applicant facility judges that research has adversely affected the survival experience, it should so explain in sufficient detail that the expert consultants can take it into account. We recognize that some transplant facilities are actively engaged in clinical research; for example, the evaluation of the transplantation of lungs in combination with the transplantation of a heart. This procedure is considered investigational and is not covered by Medicare. The clinical indications for this procedure should be governed by the facility's research protocol and are likely to differ from the facility's heart transplant patient selection criteria. Under these circumstances, the patient selection criteria called for by our notice would not apply to all patients of the facility and should not be viewed as a restriction on a facility's ability to engage in clinical research. However, for circumstances other than clinical research we expect that the patient selection criteria will be applied uniformly across all Medicare and non-Medicare patients.

The suggestion to allow facilities some flexibility in the application of their own patient selection criteria relates to the proposed facility criterion at II.A.3(c)(8)(B), which states that the facility is responsible for the ethical and medical considerations involved in the patient selection process and the application of patient selection criteria. We believe that it would be inappropriate to transplant any patient who does not meet the facility's selection criteria without review by the facility's institutional review board or a comparable body responsible for considering in a comprehensive, deliberate, and documented manner the unique circumstances of a given case. With the approval, of such a body, minor departures from the established criteria might be allowed. In the absence of this approval, failure to adhere to the facility's patient selection criteria will result in the transplant not being covered.

This notice delineates those conditions under which heart transplants may be covered by the Medicare program. Generally, heart transplants that are performed in settings or under circumstances not in conformance with standard Medicare rules of coverage and payment or with the provisions of this notice will not be covered. This would include not only heart transplants performed in facilities that were not approved as Medicare heart transplant centers, but also might include heart transplants performed on patients who did not meet an approved facility's patient selection criteria or who were transplanted under a research protocol.

*I. Patient Selection Criteria*

*Comment:* We received numerous comments on the proposed guidelines for patient selection criteria. Two commenters felt that the guidelines were unnecessary. One recommended that we include a positive definition of those patients for whom heart transplants are indicated so that unnecessary transplants at an early stage of disease would be avoided. One commenter stated that the criteria were slanted so that only extremely low risk patients would qualify. Several commenters felt that some of the listed adverse factors were not in keeping with current standards. For example, many felt that

the age guideline was restrictive and should be raised. One commenter recommended that we clarify our policy to indicate that an individual may be a candidate for a heart transplant even though he or she fails to meet all of the elements in the patient selection criteria.

*Response:* We have not amended this section, since these are only guidelines for facilities to indicate the type of factors or areas we would like to see addressed in their patient selection criteria. As we stated in the proposal, the patient selection criteria are the responsibility of the heart transplant facility. We expect that different facilities will have differing patient selection criteria. We will be relying on the expert consultants to identify, during the review of a given facility, any criteria that, in their judgments, are not consistent with current medical practice.

Because it is not our intent to dictate the practice of medicine, we purposely avoided a list of absolute indications and contraindications for heart transplantation. However, we believe that the guidelines are reasonable and expect to disapprove any facility whose patient selection criteria depart so significantly from the guidelines that the performance of heart transplants in accordance with those criteria could not be considered medically reasonable and necessary on the basis of currently available knowledge. For example, we believe that an individual who fails to meet all the criteria would not be a suitable transplant candidate. Our rationale for rejecting a facility that proposes to accept patients who are far outside our guidelines is twofold. First, the use of significantly less restrictive criteria could place Medicare beneficiaries unnecessarily at risk. Second, the use of criteria that would permit the transplantation of patients with only a small likelihood of survival could lead to circumstances in which a scarce resource would be wasted. While we have not identified the specific indications for a transplant, we believe that unnecessary transplants will be avoided since our guidelines indicate that patients must have a very poor prognosis and all other therapies must have been tried or considered.

*Comment:* One commenter suggested that we develop a standardized, quantifiable method for determining physiologic age.

*Response:* We do not intend to develop any methods for determining physiologic age. The patient's physician is responsible for making this determination and for determining whether the patient is a candidate for transplantation based on a particular facility's patient selection criteria, which will follow the guidelines outlined in section V, of this notice.

*Comment:* One commenter proposed that obtaining a transplant patient's informed consent be added as one of the patient selection criteria.

*Response:* We believe that this would be unnecessary. Obtaining a patient's informed consent is an accepted standard of practice before performing any type of surgery. We expect this to be a standard procedure at any approved facility.

*J. Patient Management*

*Comment:* One commenter recommended that the first three months of postoperative care should be provided only in a designated center.

*Response:* We do not agree with this suggestion. We are not placing a specific time limit on how long a transplant recipient must remain in the designated facility. Under the final facility criteria (at V.A.2.c.), we require that the transplant facility maintain liaison with the patient's attending physician when the patient returns home or is transferred to another facility after discharge from the designated transplant facility.

*K. Transplant Team Expertise*

*Comment:* Several commenters suggested that the experience of the transplant team, rather than the experience of the facility, be used to determine a hospital's fitness as a heart transplant center.

*Response:* While we understand and appreciate the concern that is evidenced by these questions and comments, we have not been persuaded to change our position that the facility, not the team, is the proper repository for experience and survival rates. The suggestion to base experience on the team rather than the facility also relates to the issue of approval of the type of consortium that is designed to share a single transplant team that rotates among the member hospitals.

Our position is based upon several considerations. First, we believe we must deal with hospitals individually, and that it is inappropriate to apply the experience of one hospital's team to another hospital that lacks experience but acquires the services of that team. Neither can we average or group the experience of several hospitals when reviewing their applications. Second, while important, more than just a successful heart transplant team seems to contribute to the development of good experience and survival rates. The facility criteria measure a number of factors beyond the qualifications of the transplant team in determining the overall commitment of the facility to a successful transplant program. Finally, the use of criteria, including the relatively long-term survival rate, are predicated on the need to measure a facility's long range commitment to a heart transplant program. To allow the experience of an individual or group of individuals to substitute for that institutional commitment would call into question the entire rationale for the facility criteria we have proposed. Although the loss of key members of the transplant team will require a review by HCFA to assure that the facility continues to meet the criteria, their acquisition by another facility should not, in our view, entitle that other facility to obtain the first facility's hard-won experience and success.

*Comment:* One commenter claimed that our proposed facility criteria failed to recognize the role of the organized medical staff.

*Response:* We disagree with this comment. The term facility includes the medical staff. In addition to the responsibilities of the medical staff outlined in the proposed notice at II.A.3.b., we fully expect the medical staff to be primarily responsible for the development of the patient selection criteria and the patient management protocols and to be intimately involved in all other aspects of the heart transplant program.

*Comment:* One commenter stated there are no specific criteria that the transplant surgeon must meet. Another recommended that experienced personnel whose transplantation competence is well established should be considered qualified.

*Response:* The proposed criteria at II.A.3.b., concerning a facility's commitment of resources and planning, requires board certification or eligibility in the physician s respective medical or surgical field. We have, however, modified the criteria to allow the substitution of relevant experience for board certification or eligibility.

*L. Expertise and Commitment to Cardiovascular Medical and Surgical Program*

*Comment:* Several commenters suggested changing the number of cardiac catheterizations and coronary arteriograms (500) or the number of open heart surgical procedures (250) performed annually, which were included in the proposal under criteria II.A.3.b.(2), which addresses the facility's expertise and commitment to an active cardiovascular medical and surgical program.

*Response:* We believe this criterion is important, but the number of procedures are only general indicators of experience, not absolute standards that must be met for Medicare approval. The expert consultants will carefully weigh all factors and apply reasonable standards when reviewing a facility's application. Therefore, we have made no change to the criteria.

*M. Experience*

*Comment:* The greatest number of comments received dealt with the criterion requiring a facility to have had more than two years experience performing heart transplants. Specifically, these commenters requested either the elimination of the requirement that facilities had performed at least 12 transplants in the period preceding the last two years or the adoption of transitional provisions for facilities with two years or less experience, which would rely more upon survival rates than numbers of transplants performed.

*Response:* While we have not fully accepted these comments, we believe that it is important to explain the basis for this requirement and why we have chosen to retain it. Among the criteria for approval, we give considerable weight to the criteria related to survival rates. We are convinced that full one-year and full two-year survival statistics are necessary to provide an adequately reliable measure of the success of an applicant facility. We sustain the judgement that there must be at least 24 patients with whom one full-year of survival experience has taken place and at least 12 patients with whom two full-years of survival experience have taken place. It is for these reasons that the proposed experience levels remain unchanged. We note that in order to meet the experience criteria, a facility must have performed at least 36 transplants; that is, twelve or more patients in each of the two preceeding 12 month periods and twelve patients prior to that. However, it is not required that the facility have at least 36 months of experience since beyond the second 12 months period, a facility could perform the required twelve transplants over a period of less than 12 months. Conversely, these 12 transplants could have been performed over a period of more than 12 months, but no earlier than January 1, 1982.

We are clarifying that experience and survival rates must be presented on all patients receiving cardiac transplants since January 1, 1982, and that it is on this basis that experience and survival are assessed. The applicant facilities will be required to report experience and survial rates as of a given point in time. That point in time must be within 90 days of the date we receive the application and will be referred to as the fiducial date. The fiducial date for experience and survival results must be the same and it must be stated.

It is emphasized that the ruling does not specify the date by which this experience must be achieved. Some facilities that do not currently meet the requirements of experience will undoubtedly meet them in the future, and can apply at that time.

Consistent with the previous notice, a facility that applies within 90 days of this notice and is accepted may receive retroactive approval to as early as October 17, 1986, or the date upon which it first met the criteria, whichever occurred later. A facility that seeks retroactive approval must show that it met the experience and survival criteria on the date to which it seeks retroactive approval, as well as show its experience and survival to the stated fiducial date.

*Comment:* A commenter noted that the criteria only recognize a facility's current ability to provide heart transplants and ignore future capabilities to provide this service.

*Response:* This observation is correct. The criteria used to select a transplant facility are based on demonstrated experience and success and do not take into account future capabilities.

*Comment:* One commenter suggested allowing hospitals with a minimum of two years' experience with over 250 open heart surgical procedures per year to submit experience data for those procedures in lieu of heart transplant data.

*Response:* We have rejected this comment. Open heart surgical procedures are not directly analogous to heart transplant procedures, and open heart procedures do not demonstrate experience and success with a clinical organ transplantation program involving immunosuppressive techniques.

*N. Survival Rates*

*Comment:* Numerous comments were received regarding our proposed criteria of one- and two-year actuarial survival rates of 73 and 65 percent respectively. Many of the commenters recommended increasing the standards in view of better results obtained at certain transplant centers. Many others expressed concern that the proposed standards do not provide allowances for facilities that are: (1) Involved in clinical research; (2) treating high risk patients; or (3) utilizing artificial hearts or ventricular assist devices as bridges to transplants. They contended that adherence to the criteria would inhibit clinical progress and could make it more difficult for a high risk patient to receive a needed transplant. One commenter suggested the use of actual rather than actuarial survival rates since actuarial rates may be based upon a number of assumptions or statistical analysis methods that differ among the reporting facilities. To reflect accurately the true survival rates associated with the procedure it was suggested that we specify that determination of survival rates begin with the date of the transplant.

*Response:* Our standards of 73 percent one-year and 65 percent two-year actuarial survival rates are based upon an analysis of available survival data and judgments about what can reasonably be expected. We recognize that several facilities have reported considerably higher survival rates recently, but it is premature to fix such higher rates as standards until it is clear that such rates can be reasonably widely expected. Others argue that the proposed survival rates are too high if high risk patients are to be treated. It is our judgment that patients meeting the criteria in section V.D. should have at least the specified survival rates. Thus, we note both proponents of higher and lower survival standards, and at this time, we reiterate the proposed standards. If further experience suggests that these survival rate standards need to be changed, particularly moved to higher levels, the standards will be changed accordingly. We will depend heavily upon the advice of the expert consultants.

The expert consultants may also take into account, to the extent they deem necessary, the consequences of clinical research upon the survival data. The utilization of artificial hearts or ventricular assist devices as bridges-to-transplant certainly fits the category of clinical research, and its potential impact upon survival would be handled in this manner.

The comment that actual rather than actuarial survival rates be specified has not been accepted because the actual survival rate for a period takes into account only those who were operated upon before that period. Thus, the experience with more recent patients, whether it is good or bad, does not enter into that calculation. We regard the survival rate criteria as important. Because of this, we also believe that it is important that there be uniformity in the method used by hospitals to support their survival rates. Therefore, in addition to requiring that all facilities provide actual data on survival, we also are requiring that they perform actuarial

statistical analyses using the Kaplan-Meier technique, and we have established uniform definitions that are necessary for comparability of statistical analyses of survival. In deciding upon what approach should be followed, we were guided by accepted statistical conventions. The Kaplan-Meier actuarial procedure is a well established and sound procedure for reporting medical phenomena.

In using the Kaplan-Meier technique, facilities will be required to provide survival analyses on all patients transplanted since January 1, 1982. The following definitions and rules must be used:

(a) The date of transplantation must be the starting date for calculation of the survival rate.

(b) For those dead, the date of death is used if known. If the date of death is unknown, it must be assumed as one day after the date of the last ascertained survival.

(c) For those who have been ascertained as surviving within 60 days before the fiducial date, survival is considered to be the date of last ascertained survival, except for patients described in paragraph (e) below.

(d) Any patient who is not known to be dead but whose survival cannot be ascertained to a date that is within 60 days of the fiducial date, must be considered as "lost to followup" for the purposes of this analysis.

(e) Any patient transplanted between 61 and 120 days before the fiducial date must be considered as "lost to followup" if he or she is not known to be dead and his or her survival has not been ascertained for at least 60 days before the fiducial date. Any patient transplanted within 60 days before the fiducial date must be considered as "lost to followup" if he or she is not known to be dead and his or her survival has not been ascertained on the fiducial date.

(f) A facility must submit its survival analyses using the assumption that each patient in the "lost to followup" category specified in paragraphs (d) and (e) died one day after the last date of ascertained survival. However, a facility may submit an additional analyses that reflects each patient in the "lost to followup" category as alive at the date of the last ascertained survival.

Because of the importance of survival data and to provide maximum information to the reviewers, a limited amount of actual information on every heart transplant performed at the facility since January 1, 1982, is required. No patient may be omitted, but any unique circumstances that the facility believes should be considered may be described. Unique patient identifiers are not needed. The minimum data are:

1. Transplant number
2. Age
3. Sex
4. Date of transplant
5. Date of most recent ascertained survival
6. Date of death
7. Category of each patient (that is: living, dead, or "lost to followup" according to criteria (d) or (e) above).

Although we are not requiring that these data be submitted in a particular format, our review will be facilitated if the data are submitted as follows:

- Data are tabulated in seven columns, with data for each patient appearing as one line and listed in the sequence of date of transplant.
- The fiducial date should appear on each page.
- The transplant numbers listed may be existing heart transplant numbers used by the applicant facility. If so, the basis for any missing numbers should be explained.
- The tabulation should include no more that these required data. If more data are provided, they should be through additional tables or supplemental explanation.

*O. Data Maintenance*

*Comment:* We received several comments on the proposed criteria that facilities must agree to maintain and, when requested. Periodically submit to HCFA summary data, in standard format. All of the commenters supported routine collection and analysis of data. Two recommended that the data be made available to the public. One commenter recommended against the release of any data in raw form and one other offered assistance in the acquisition, analysis and presentation of data.

*Response:* We agree with the recommendation to require the routine submission of data by facilities. We will require facilities to maintain summary data in standard format and to submit that data on an ongoing basis. Facilities not approved for Medicare covered heart transplants are not required to maintain summary data in standard format. However, these facilities should be aware that, if and when they apply for Medicare approval, they will be required to submit such data for all patients receiving a heart transplant beginning 30 days after being notified of our data requirements. We plan to provide such notification to all hospitals regarding the data requirements in the near future.

We have not yet finalized the standard format to be used by the facilities. In view of our need to publish a final notice so that the approval of qualified centers may begin, we have decided against delaying this notice while the standard format is finalized. We appreciate the concerns of the commenters on the release of raw data, and we will provide the affected institutions the opportunity for review and comment on the data prior to its release. We note that the raw data would not include patient specific information.

*P. Organ Procurement Agency*

*Comment:* One commenter believed our definition of an organ procurement agency (OPA) in the proposed criteria at II.A.7.b. was misleading in that it did not recognize that some facilities harvest and preserve donor hearts without the use of an OPA.

*Response:* We recognize that some transplant facilities rely on organ procurement agencies only for locating donors and coordinating activities and assume responsibility for harvesting and preserving donor hearts. Such facilities may continue to harvest and preserve organs, although we expect that more will elect to affiliate with an organ procurement agency. We define an organ procurement agency in the final criteria (V.A.7.b.) as an organization that meets the criteria of section 371(b) of the Public Health Service Act.

*Q. Oral Applications*

*Comment:* One commenter suggested that facilities be given the opportunity to present oral, as well as written, applications to HCFA.

*Response:* We have not accepted this recommendation because we believe this procedure would be very time-consuming and costly. Written applications should provide sufficient information for a determination to be made. All applicants will be asked to furnish the name and telephone number of a contact person so that additional information, if any is required, may be obtained quickly.

*R. Review by Other Agencies or Networks*

*Comment:* One commenter recommended that we require facilities to submit a copy of their applications to the appropriate state health planning agency and that we provide these agencies with the opportunity to review and comment on the applications.

*Response:* We have not accepted this recommendation. Facilities will be reviewed and approved or disapproved based on whether or not they meet the required criteria. While we appreciate

the interest of health planners in our process. We do not believe that their participation is neessary in assuring that Medicare beneficiaries receive heart transplants only at qualified facilities

*Comment:* One commenter recommended that we delegate the responsibility for the approval of heart transplant centers to an organization such as the National Organ Procurement and Transplant Network.

*Response:* We have not accepted this recommendation because decisions as to whether a facility meets HCFA's criteria or standards must be made by HCFA or its fiscal agents.

*S. Geographic Access*

*Comment:* Numerous commenters requested that some type of regional access or allocation be allowed in order to assure that there would be approved heart transplant centers in all regions of the country and that certain populations would not be denied access. Some commenters recommended waiving or easing the facility criteria to assure that such areas and populations would have approved centers as soon as possible. Many of these commenters pointed out that, in various areas of the country, travel distances present problems of time and expense, not only for the patient and family members, but for the organs being transplanted.

*Response:* We have not accepted these comments because we do not believe that geographical distribution can be equitably determined within the framework of an ongoing approval process. We recognize the hardship that this may place on some transplant recipients and their families, but we do not believe it adversely affects the clinical outcomes of the procedures. We also note that the issue of geographic access will diminish over time as more centers gain the necessary experience to meet the criteria. We do not propose to assure an even geographic distribution, nor do we propose to limit the number of facilities that may qualify in a given area. The determinant of whether a facility will be approved will depend overwhelmingly upon whether the facility meets the coverage criteria set forth in this notice

*Comment:* One commenter stated that proximity to other approved heart transplant centers should not be a consideration of approval

*Response:* We agree with this comment. In the proposed notice, we did not include proximity to other centers as a criterion for approval, nor will we include it in this final notice. If more than one facility in a given area meet the criteria, then all that qualify will be approved.

*T. Consortia*

*Comment:* Several commenters requested that various types of "consortia" be approved as heart transplant centers. In arguing for the approval of consortia by the Medicare program, some commenters cited State or local government requirements that hospitals join consortia in order to be licensed to perform heart transplants. However, there was no consensus on what the term "consortia" should mean in this context. The term consortia as used by the various commenters described a variety of distinctly different programs including cooperative arrangements:

Among hospitals in a given city, state, or region; between university and Veterans Administration hospitals; and between adult and pediatric hospitals of a university system. Additionally, one commenter opposed the approval of consortia and expressed concern that facilities might apply as a consortium in order to bolster, numerically, their experience and results as a group. It was pointed out that, in actuality, the procedures would be done individually at various institutions making up the consortium and thus, could have highly variable experiences. A fear was expressed that small programs without true commitment and dedication to cardiac transplantation might band together causing, ultimately, a significant decrement in survival rates.

*Response:* At this time, we have not accepted the comment to grant approval to consortia as Medicare heart transplant centers in spite of the problems that some hospitals face. These criteria are based on analyses of patient outcomes for transplants provided in single-facility, single staff programs. We have no experience with other institutional arrangements (such as consortia) and are uncertain what criteria to apply to these alternative institutional arrangements to be assured of their qualifications and accountability to provide medically reasonable and necessary heart transplants to Medicare beneficiaries. Substantial analytical work would be needed to develop appropriate criteria that would take account of the many arrangements that currently exist. Of greater concern, however, is the fact that the criteria for facility approval are based on the performance of individual heart transplant facilities. They are designed to assure that Medicare beneficiaries receive only reasonable and necessary heart transplants that we believe can be provided only at facilities with substantial dedication to and experience with the procedure. Failure to apply these criteria to all the individual members of a consortia could result in the loss of that assurance.

Although we will not approve consortia as heart transplant centers, we note that individual members of a consortium may submit individual applications at any time and, if they meet the criteria, they will be approved. As stated elsewhere, these criteria will be reviewed after three years. We will continue to examine possible modifications to the criteria and their potential application to alternative institutional arrangements.

*U. Expert Consultants*

*Comment:* Several commenters requested clarification of the bylaws of the panel and recommended that its role and latitude be defined. One commenter stated that the panel should have the authority to approve, disapprove or rescind approvals. One commenter requested access to the deliberations of the panel. One commenter recommended that we utilize the expert panel in the identification of the appropriate data to be maintained by the facilities.

*Response:* In considering the role of the panel, we realized that we do not expect that there will be a need for the consultants to meet as a group on a routine basis to discuss matters relating specifically to all facility applications. Thus, it is inappropriate to refer to the consultants as a panel and we have changed the criteria to refer to them as "expert consultants". The consultants will have the responsibility of reviewing applications at the request of HCFA, making recommendations to HCFA on a timely basis concerning qualified facilities, and supporting each recommendation with written documentation. Consensus of the consultants is not required. In this fashion, we expect to maximize the benefit to be gained by employing such diverse and well-qualified consultants. The consultants will serve in purely advisory roles. All decisions regarding approval, disapproval or withdrawal of approval will be made by the Administrator of HCFA after considering the findings and recommendations of the consultants. Each individual consultant will review every application, except those from heart transplant programs that have been in existence less than two years and from consortia, and will identify its strengths or weaknesses. A short summary of the findings and a recommendation regarding approval or disapproval will be forwarded to the Administrator. The findings of the

consultants will be considered pre-decisional and not subject to public disclosure. However, every facility will be notified of its approval or disapproval and the basis for that decision. In addition to reviewing applications, the consultants may propose specific changes to the coverage criteria or offer advice and suggestions regarding the process of review, approval, and monitoring of cardiac transplant facilities.

*Comment:* We received several comments regarding the composition of the panel. Most commenters recommended including individuals with expertise in hospital administration. We received recommendations to include experts in health planning, ethics and law and to consider demographic representation as well. We also were advised to include representatives of private community hospitals in addition to academic teaching centers. One commenter recommended that we solicit nominations from the industry while two others submitted nominations as part of their comments.

*Response:* After the publication of the proposed notice, we solicited nominations from various professional organizations and consumer representative groups. In response to our request, we received the names of over 50 individuals to serve as consultants to us in reviewing applications from hospitals wishing to be approved heart transplant centers for Medicare coverage purposes.

After consideration of these nominations as well as the nominations and comments received from the proposed notice, we selected nine individual consultants. Our selection was based on three primary considerations: Professional qualifications related particularly to heart transplantation; the need for a balance among the related specialties as well as perspectives towards heart transplantations; and interest and availability of the individuals to participate in this activity. We agreed with the recommendation to include among those experts individuals with expertise in hospital administration and solicited nominations from this field as well as from the fields of cardiology, cardiovascular surgery, organ transplantation, immunosuppression and health care resource utilization. We did not believe that it was appropriate to consider experts in health planning, ethics or law, although the individuals we selected have some familiarity with these areas. Although the principal basis for selecting the individuals was clinical or administrative expertise, we considered, to the extent possible, demography and representation of community hospitals in making our selections. All of the consultants chosen are eminent and widely recognized experts and practitioners in their fields. We believe we achieved the desired balance among the specialties by our selection of representatives from the major relevant disciplines.

*Comment:* One commenter stated that the criteria are flawed because the experts in the field of cardiac transplantation who assisted in the development of the criteria may have a conflict of interest in the approval of facilities.

*Response:* We disagree with this statement. We believe that the criteria represent a general consensus of the experts in the field of heart transplantation who provided their technical expertise and advice without consideration for personal or institutional gain.

*Comment:* One commenter suggested that they expect the panel to be limited to 90 days in which to make a decision on an application.

*Response:* We do not feel a specific time limit should be placed on reviewing an application to become a transplant facility. We would expect that these decisions would be made timely and generally within 90 days.

*Comment:* One commenter suggested that the language in the proposed criterion II.B. be modified to add the word "predominantly" in the second sentence before the word "non-Federal."

*Response:* We disagree with this modification. The individual consultants will be non-Federal people.

*Comment:* One commenter suggested that the review process for applications be two-fold: Those meeting the numercial standards need only a staff review, while those not meeting the numerical standards be reviewed by the panel.

*Response:* We disagree with this suggestion. For purposes of fairness and consistency, applications will be reviewed by the expert consultants. However, we have identified two situations in which applications will not be reviewed by the expert consultants. These are cases in which disapprovals will be made by HCFA based on the fact that: (1) A facility's heart transplant program has not been in existence for at least two years; or (2) a consortium has submitted an application.

*V. w. Appeals*

*Comment:* Two commenters objected that there was no provision allowing a hospital to appeal HCFA's decision to disapprove their application to become a heart transplant facility under Medicare.

*Response:* Although the proposed notice did not contain a provision allowing a facility to appeal a disapproval of its application, we wish to make it clear that we are prepared to reconsider any application if requested to do so. The basis of any decision to disapprove a facility will be made known to that facility, and if the facility believes that we have made some factual error, then it will be given the opportunity to rebut our findings and submit additional or corrected information regarding its application for approval to provide Medicare covered heart transplants. We do not believe that the appeal provisions in 42 CFR Part 405, Subpart O are appropriate for heart transplant facility appeals since the decision involves the coverage of the underlying procedure itself. By contrast, in the instances specified in Subpart O, basic coverage of services is not in question, only whether it was performed by entities or facilities meeting specific requirements. In the case of heart transplants, however, the procedure remains generally experimental and not covered, except when done in approved facilities. In addition, it requires a high degree of specialized expertise to judge whether a heart transplant facility meets the criteria, and it would be inappropriate to have an administrative law judge make this decision in the context of an administrative hearing.

*W. x. Payment*

*Comment:* One commenter asked that flexibility be built into the payment level within DRG 103.

*Response:* There is no need to incorporate any flexibility into DRG 103. As with all other DRG cases for hospitals under the prospective payment system, additional payments are available for cost and day outliers. Further, this DRG, as is the case with all others, will be recalibrated annually.

*Comment:* One commenter suggested that we take a conservative approach to adjusting the DRG weight and recommended that we not recalibrate the DRG weight until the second or third year. By doing this, the commenter suggested that we would have a better statistical sample of Medicare transplants on which to base the recalibration.

*Response:* Section 9302 of OBRA requires the Secretary to adjust DRG classifications and weighting factors for FY 1988 and at least annually thereafter. At the time of the first review under this provision, we will examine the issue of whether to use only Medicare data in

setting the weight of heart transplants. In the interim, we will use the weight of 14.9944 for heart transplant payment.

*Comment:* One commenter questioned whether DRG 103, "Heart Transplants," encompasses the preoperative evaluation necessary to determine whether the patient is an appropriate candidate for heart transplantation.

*Response:* DRG 103 provides payment for all services furnished during the hospitalization in which the transplant is performed. Payment for preoperative evaluation to determine if the patient is an appropriate candidate is included in DRG 103 if it was performed during the same admission as the transplant. Payment for medically necessary inpatient preoperative evaluations prior to the hospital stay during which the transplant is performed also will be made under the prospective payment system. The amount of payment will vary depending on the DRG to which the patient is assigned.

*Comment:* One commenter suggested that the acquisition cost of hearts be included in the DRG 103 payment, rather than paid as a cost pass-through.

*Response:* We have not accepted this comment at this time. For the future, we are considering paying for heart acquisitions on a prospective basis, possibly including them in the DRG payment. However, it is necessary to pay for heart acquisitions in FY 1987 on a cost basis since the DRG weight for heart transplants does not include the costs associated with heart acquisitions. Revising the DRG weight for heart transplants to include acquisition costs is not possible at this time since accurate data on heart acquisition costs are not readily available.

*Comment:* One commenter suggested that no reimbursement limit be placed on teaching hospitals since heart transplants are on the cutting edge of medical technology.

*Response:* We have not accepted this suggestion. As with all other Medicare admissions under the prospective payment system, payments for heart transplantation will be limited by the DRG weight and any day or cost outlier payments. We note that teaching hospitals receive direct and indirect medical education payments in addition to DRG and outlier payments.

*Comment:* One commenter thought that some consideration should be given to increasing payment for services furnished by anesthesiologists during heart transplantation operations.

*Response:* We do not believe that this issue is germane. Payments to anesthesiologists will not change as a result of this notice.

*Comment:* One commenter wanted to know if the military insurance program, CHAMPUS, would expand their coverage to include heart transplantation.

*Response:* On December 11, 1986, the Department of Defense announced in the **Federal Register** (51 FR 44601) that the CHAMPUS program will provide coverage of heart transplants under certain conditions.

*Comment:* One commenter stated that Part A intermediaries will be required to establish a cardiac acquisition payment rate for all independent organ procurement agencies that procure hearts.

*Response:* Due to the anticipated difference in the Medicare utilization between kidney procurement and heart procurement, we do not anticipate a cost reimbursement system for heart acquisition identical to that used for kidneys. Instructions will be issued in the near future dealing with the payment of heart acquisition costs.

*Comment:* One commenter submitted the results of an analysis of operating cost information related to heart transplants and recommended that it be used to establish a more appropriate weight for DRG 103. The results were based on data gathered from eleven transplant facilities between January, 1985 and June, 1986, and included 36 Medicare-eligible patients and 202 non-Medicare-eligible patients. When Medicare-eligible and non-Medicare eligible patients were separated, the average cost per case was $85,412 and $59,279, respectively. It was concluded that if the weight for DRG 103 remained at 14.9944 as proposed, then hospitals that provided heart transplants to Medicare beneficiaries would be reimbursed for 77 percent of their operating costs. Several other commenters expressed concern that the proposed weight was too low, and one commenter recommended that we analyze more current cost and charge data.

*Response:* In studying the appropriateness of the proposed relative weight, we reviewed the best data available to us at the time which included Medicare and non-Medicare charge data accumulated under the National Heart Transplant Study (NHTS). Because the six hospitals included the NHTS met comparable standards of experience, expertise, resources, and commitment to their transplant programs, the NHTS provided the most reliable and comprehensive compilation of cost data.

The relative weight for DRG 103 will be recalculated when the classifications and weighting factors for all 473 DRGs are recalibrated for FY 1988. In the interim, we will use the relative weight of 14.9944 that was proposed in the October 17, 1986 notice.

*Comment:* One commenter stated it is unclear whether follow-up care is available under Part A.

*Response:* Follow-up care is available under Part A for any medically necessary admission.

*X. Effective date*

*Comment:* One commenter pointed out that the proposed effective date (October 17, 1986) for Medicare coverage of heart transplants does not give State Medicaid programs time to comply with the requirements and time frames of the Administrative Procedures Act, to which they are bound.

*Response:* State Medicaid programs are not bound by Medicare's effective date of coverage and may choose any effective date they wish.

*Y. Specific Testimonials*

*Comment:* About one-fourth of the comments were testimonials in favor of a transplant facility with which the commenter was familiar.

*Response:* While we appreciate the interest which prompted such comments, testimonials, by themselves, are not considered when reviewing applications of facilities that wish to become heart transplant centers under Medicare.

## IV. Summary of Changes

On the basis of comments received, as well as certain provisions of the Omnibus Budget Reconciliation Act of 1986 (OBRA), which was signed by the President four days after the publication of the proposed notice, we have made several changes to our proposed policies. These changes are summarized below:

*A. Coverage of Immunosuppressive Drugs*

Section 9335(c) of OBRA modified section 1861(s)(2) of the Act to provide coverage of immunosuppressive drugs furnished, to an individual who receives an organ transplant for which payment is made, within one year after the date of the transplant procedure. This coverage applies to immunosuppressive drugs furnished on or after January 1, 1987. We have issued instructions to participating hospitals and Medicare contractors to implement this new provision. Medicare beneficiaries who receive heart transplants at non-approved facilities will not be eligible for coverage of their immunosuppressive

drugs since no payment will have been made for the transplant at the facility.

*B. Qualifications of Transplant Team*

We have modified our requirement that responsible medical/surgical members of the transplant team must be board certified or eligible in their respective disciplines to allow the substitution of relevant experience.

*C. Experience and Survival Criteria*

We are requiring that all facilities report their actuarial statistical analyses using the Kaplan-Meier technique, and we have established uniform definitions that are necessary for comparability of statistical analyses of survival. We have added a requirement that facilities must submit a minimal amount of data on every patient transplanted at the facility between January 1982 and the date of the application. Facilities may submit additional patient information that they believe should be taken into account during our review of their applications.

*D. Maintenance and Submission of Data*

We have modified our requirements that the facility must agree to maintain and, when requested, periodically submit summary data to indicate that the facility must maintain and routinely submit the data on an ongoing basis. Facilities not approved for Medicare covered heart transplants are not required to maintain summary data in standard format. However, these facilities should be aware that, if and when they apply for Medicare approval, they will be required to submit such data for all patients receiving a heart transplant beginning 30 days after being notified of our data requirements. We plan to issue instructions to all hospitals regarding the required summary data in the near future.

*E. Organ Procurement*

We have clarified the language concerning the organ procurement program recognize that some facilities may operate their own programs. Thus, the proposed language stating that a facility must "participate" in an organ procurement program has been changed to state that a facility must "operate or participate" in an organ procurement program.

Additionally, we have revised the definition of an organ procurement agency to reflect that it must meet the criteria of section 371(b) of the Public Health Service Act.

*F. Expert Consultants*

We have changed the references to the "panel of experts" to indicate that we will be relying on the advice of "individual expert consultants". In considering the role of the panel, we realized that we do not expect that there will be a need for the consultants to meet as a group on a routine basis to discuss all of the facility applications. A consensus of the consultants is not required. We also have specified that the consultants will review applications at the request of HCFA, make recommendations to HCFA on a timely basis, and support each recommendation with written documentation.

*G. Exceptions*

We have privided for some limited exceptions to the facility criteria if there is justification. We intend to rely on the professional expertise and judgment of expert consultants in determining whether heart transplants may be performed safely and effectively in a given facility. Consequently, we have not developed specific alternative criteria for facilities that do not meet all the criteria. However, we have identified three circumstances for which exceptions may not be made. First, facilities whose transplant programs have been in existence less than two years will not be approved. Second, applications from consortia will not be approved. Third, geographic considerations will not be taken into account. Disapprovals of facilities whose transplant programs have been in existence less than two years and of consortia will be made by HCFA and will not require prior reviews by the individual expert consultants.

*H. Forthcoming Changes*

Section 9318 of OBRA 1986 included other provisions related to organ transplantation and procurement that are summarized here for informational purposes:

- To participate in Medicare and Medicaid, all hospitals will be required to establish protocols to encourage organ and tissue donation.
- Any hospital performing transplants will be required to be a member of and abide by the rules of the Organ Procurement and Transplantation Network.
- To receive payment under title XVIII or XIX for the cost of organ procurements, organ procurement agencies (OPAs) will be required to be a qualified OPA operating under a grant under section 371(a) of the Public Health Service Act, or have been certified or recertified by the Secretary within the previous two years as meeting the standards to be a qualified OPA as described by section 371(b) of the PHS Act.
- OPAs will be required to meet performance-related standards to be designated as an OPA so that payments may be treated as organ procurement costs for the purposes of reimbursement. The Secretary may designate only one OPA per service area.

The instructions and any necessary regulations to implement these provisions will be published in the future. The statute provided an effective date of October 1, 1987 for these provisions.

**V. Provisions of this Notice and Ruling**

We have determined that, for Medicare coverage purposes, heart transplants are medically reasonable and necessary when performed in facilities that meet certain criteria. Because the HCFA Ruling HCFAR 80–1 excluded heart transplants from coverage under the Medicare program, we are issuing this notice as a new HCFA ruling. It will rescind HCFAR 80–1 and set forth the new coverage policy for heart transplants. We plan to compile and publish all HCFA Rulings in the "Health Care Financing Administration Rulings" booklet which will be indexed for citation purposes. When this Ruling is republished in the booklet, it will be known as HCFAR 87–1. The text of the HCFA ruling is as follows:

**Criteria for Medicare Coverage of Heart Transplants—HCFAR 87–1**

*Purposes*

This Ruling rescinds the HCFA ruling, HCFAR 80–1 that excludes coverage of heart transplants under the Medicare program. It also provides public notice of HCFA's new coverage policy for heart transplants.

*Citiations*

Sections 1102, 1862(a)(1) and 1871 of the Social Security Act (42 U.S.C. 1302, 1395y(a)(1) and 1395hh).

*Ruling*

HCFAR 80–1 that excludes heart transplants from coverage under the Medicare program is rescinded. Facilities that wish to obtain coverage of heart transplants for their Medicare patients must submit an application and supply documentation showing their initial and ongoing compliance with each of the criteria. For facilities which are approved, Medicare will cover under Part A (Hospital Insurance) all medically reasonable and necessary inpatient services. Payment for these services generally will be made under the Diagnosis Related Group (DRG) classification code #103, "Heart transplants". Organ acquisition costs will be paid separately on a cost-reimbursement basis. Physician services, related to the transplant, as well as non-hospital services related to pre- and post-transplant care, will be covered under Part B (Supplementary

Medical Insurance) and reimbursed on the basis of reasonable charges. In accordance with the provisions of section 9335(c) of OBRA, post-transplant care for covered transplants includes outpatient, self-administrable immunosuppressant drugs, such as cyclosporine, for a period of up to one year beginning with the date of discharge from the inpatient hospital stay during which the transplant was performed. If a Medicare beneficiary receives a covered heart transplant from an approved facility, reasonable and necessary services for followup care and for complications are covered, even if such services are furnished by a hospital that is eligible for Medicare reimbursement but is not specifically approved by Medicare for heart transplantation.

Medicare will not cover transplants or re-transplants in facilities which have not been approved as Medicare transplant facilities. If a Medicare beneficiary receives a heart transplant from a facility that is not approved by Medicare for heart transplantation, we will not cover any inpatient services associated with the transplantation procedure. Neither will we cover physician services associated with the transplantation procedure. Thus, payment will not be made for the performance of the transplant or for any other services which are incorporated into a global fee.

However, after a beneficiary has been discharged from a hospital (which has not been approved by Medicare as a heart transplant center) in which he or she receives the heart transplant, medical and hospital services required as a result of the prior non-covered transplant may be covered in a facility otherwise eligible for Medicare reimbursement when they are reasonable and necessary in all other respects. Thus, coverage will be provided for subsequent inpatient stays or outpatient treatment (exclusive of self-administrable immunosuppressive drugs) ordinarily covered by Medicare even if the need for treatment arose because of a previous non-covered heart transplant procedure. These services also will be covered for Medicare beneficiaries who were not beneficiaries at the time they received a heart transplant regardless of whether or not the transplant was performed at an approved facility.

Once a facility applies for approval and is approved as a heart transplant facility for Medicare purposes, it is obliged to report immediately to HCFA any events or changes which would affect its approved status. Specifically, a facility must report any significant decrease in its experience level or survival rates, the transplantation of patients who do not meet its patient selection criteria, the loss of key members of the transplant team, or any other major changes that could affect the performance of heart transplants at the facility. Changes from the terms of approval may lead to withdrawal of approval for Medicare coverage of heart transplants performed at the facility.

A facility that we approve as meeting the criteria set forth in this notice may seek Medicare payment from its Medicare intermediary for heart transplants performed on Medicare patients. For facilities receiving Medicare payment under the Medicare prospective payment system, we will use the DRG classification #103, "Heart transplants". We have established a relative weight of 14.9944 for DRG 103 and a 51 day outlier threshold.

Heart acquisition costs will be reimbursed as a cost pass through.

The criteria that we will require facilities to meet in order to receive Medicare payment for heart transplantations follow.

A. Criteria for Facilities

1. *Patient selection.* A facility must have adequate written patient selection criteria and an implementation plan for their application. (Guidelines for patient selection criteria appear in section V. D. of this ruling.)

2. *Patient management.* A facility must have adequate patient management plans and protocols that include the following:

a. Detailed plans for therapeutic and evaluative procedures for the acute and long-term management of a patient, including commonly encountered complications. The basis for confidence in these plans must be stated.

b. The logistics of the plans for patient management and evaluation during the waiting and immediate post-discharge, as well as in-hospital, phases of the program.

c. The logistics of the plans for long-term management and evaluation, including education of the patient, liaison with the patient's attending physician, and the maintenance of active patient records for five years.

3. *Commitment.* A facility must make a sufficient commitment of resources and planning to the heart transplant program to carry through its application. Indications of this commitment could include the following:

a. Commitment of the facility to the heart transplant program is at all levels and broadly evident throughout the facility. (A cardiac transplantation program requires a major commitment of resources. These may intermittently include many other departments as well as the principal sponsoring departments.)

b. The facility has both the expertise and the commitment for participation in medical, surgical, and other relevant areas, particularly cardiology, cardiovascular surgery, anesthesiology, immunology, infectious diseases, pulmonary diseases, pathology, radiology, nursing, and social services. The facility must identify individuals in these areas in order to achieve an identifiable and stable transplant team. Responsible medical/surgical members of the team must be board certified or eligible in their respective disciplines or have demonstrated transplantation competence irrespective of board status.

(1) The component teams must be integrated into a comprehensive team with clearly defined leadership and corresponding responsibility.

(2) The facility must have an active cardiovascular medical and surgical program. (General indicators of this type of program would be a minimum of 500 cardiac catheterizations and coronary arteriograms annually, with the ability and willingness to do these procedures on an emergency basis, and a surgical group that has demonstrated low mortality rates in an active open heart surgical program involving at least 250 procedures a year.) The surgical team responsible for transplantation must be an identified, stable group.

(3) The anesthesia service must identify a team for transplantation that must also be available at all times.

(4) The infectious diseases service must have both the profesional skills and laboratory resources needed to discover, identify, and manage the complications from a whole range or organisms, many of which are uncommonly encountered in the usual infectious diseases laboratory.

(5) The nursing service must identify a team or teams trained not only in hemodynamic support of the patient, but also in the special problems of managing immunosuppressed patients.

(6) Pathology resources must be available for studying and reporting promptly the pathological responses to transplantation.

(7) Adequate social service resources must be available.

(8) Mechanisms must be in place for managing the heart transplant program which assure that—

(A) Patient selection criteria are consistent with those set forth in the facility's written patient selection criteria;

(B) The facility is responsible for the ethical, and medical considerations involved in the patient selection process and application of patient selection criteria.

(9) Adequate plans exist for organ procurement meeting legal and ethical criteria, as well as yielding viable transplantable organs in reasonable numbers.

4. *Facility plans.* The facility must have overall facility plans, commitments, and resources for a program that will assure a reasonable concentration of experience; specifically, 12 or more cardiac transplantation cases per year. This level of activity must be shown feasible and likely on the basis of plans, commitments, and resources.

5. *Experience and survival rates.* The facility must demonstrate experience and success with a clinical organ transplantation program involving immunosuppressive technique. The evaluation of a facility's experience and survival rates will be made on patients transplanted since January 1, 1982.

The facility must have an established cardiac transplantation program with documented evidence of 12 or more patients in each of the two preceding 12-month periods and twelve patients prior to that but since January 1, 1982. Such programs are deemed to have the potential for acceptable data bases for estimating survival.

The applicant facilities will be required to report experience and survival rates as of a given point in time. That point in time must be within 90 days of the date we receive the application and will be referred to as the fiducial date. The fiducial date for experience and survival results must be the same and it must be stated.

Survival rates may be influenced by many factors, including random chance and patient selection. However, most authorities agree

that a patient who is not free of adverse prognostic factors warrants cardiac transplantation only if he or she has a reasonable prognosis and the donor heart cannot be used in a patient who is a good candidate with at least a moderately urgent need and who is in reasonable geographic proximity. Initially, the facility must demonstrate actuarial survival rates of 73 percent for one year and 65 percent for two years for patients who have had heart transplants since January 1, 1982 at that facility. In reporting their actuarial survival rates, facilities must use the Kaplan-Meier technique. The following definitions and rules also must be used:

a. The date of transplantation must be the starting date for calculation of the survival rate.

b. For those dead, the date of death is used if known. If the date of death is unknown, it must be assumed as one day after the date of the last ascertained survival.

c. For those who have been ascertained as surviving within 60 days before the fiducial date, survival is considered to be the date of last ascertained survival, except for patients described in paragraph (e) below.

d. Any patient who is not known to be dead by whose survival cannot be ascertained to a date that is within 60 days before the fiducial date, must be considered as "lost to followup" for the purposes of this analysis.

e. Any patient transplanted between 61 and 120 days before the fiducial date must be considered as "lost to followup" if he or she is not known to be dead and his or her survival has not been ascertained for at least 60 days before the fiducial date. Any patient transplanted within 60 days before the fiducial date must be considered as "lost to followup" if he or she is not known to be dead and his or her survival has not been ascertained *on* the fiducial date.

f. A facility must submit its survival analyses using the assumption that each patient in the "lost to followup" category (according to the criteria A.5.d. or e. above), died one day after the last date of ascertained survival. However, a facility may submit an additional analyses that reflects each patient in the "lost to followup" category as alive at the of the last ascertained survival.

In addition to reporting actuarial survival rates, the facility must submit the following actual information on every Medicare and non-Medicare patient who received a heart transplant between January 1, 1982 and the date of the application:

- Transplant number.
- Age.
- Sex.
- Date of transplant.
- Date of most recent ascertained survival.
- Date of death.
- The category of each patient (that is: Living, dead, or "lost to followup" according to the criteria A.5.d. or e. above).

Unique patient identifiers are not needed. The facility may submit additional information on any of the cases that it would like the expert consultants to consider in their reviews.

Although we are not requiring that these data be submitted in a particular format, our review will be facilitated if the data are submitted as follows:

- Data are tabulated in seven columns, with data for each patient appearing as one line and listed in the sequence of date of transplant.
- The fiducial date should appear on each page.
- The transplant numbers listed may be existing heart transplant numbers used by the applicant facility. If so, the basis for any missing numbers should be explained.
- The tabulation should include no more than these required data. If more data are provided, they should be through additional tables or supplemental explanation.

6. *Maintenance and submission of data.* The facility must agree to maintain and routinely submit to HCFA in a standard format prescribed by HCFA, summary data about patients selected, protocols used and short- and long-term outcome on all patients undergoing cardiac transplantation, not only those for whom payment under Medicare is sought. (Such data are necessary to provide a data base for an ongoing assessment of cardiac transplantation and to assure that approved facilities maintain appropriate patient selection criteria, adequate experience levels and satisfactory patient outcomes.) In addition, facilities must agree to notify HCFA immediately of any change related to the facility's transplant program that could affect the health or safety of patients selected for covered Medicare heart transplants or which would otherwise alter specific elements in their application. For example, a facility must report any significant decrease in its experience level or survival rates, the loss of key members of the transplant team, or the transplantation of patients who do not meet the facility's patient selection criteria.

Facilities not approved for Medicare covered heart transplants are not required to maintain summary data in standard format. However, if and when these facilities apply for Medicare approval, they will be required to submit such data for all patients receiving a heart transplant beginning 30 days after being notified of our data requirements. We plan to issue instructions to all hospitals regarding the required summary data in the near future.

7. *Organ procurement.* The facility must operate or participate in an organ procurement program to obtain donor organs.

a. If a cardiac transplantation center utilizes the services of an outside organ procurement agency to obtain donor organs, it must have a written arrangement covering these services. The cardiac transplantation center must notify the Secretary in writing within 30 days of terminating such arrangements.

b "Organ procurement agency" is defined as an organization that meets the criteria of section 371(b) of the Public Health Service Act.

8. *Laboratory services.* The facility must make available, directly or under arrangements, laboratory services to meet the needs of patients. Laboratory services are performed in a laboratory facility approved for participation in the Medicare program.

B. Process for Review and Approval of Facilities

The approval of facilities will be based on a careful review of the materials submitted regarding their experience, survival rates, and expertise, as well as their commitment to the heart transplant program. We will conduct the review with the aid and advice of individual non-Federal, expert consultants in relevant fields. Generally, the consultants will have the responsibility of reviewing applications at the request of HCFA, making recommendations to HCFA on a timely basis concerning qualified facilities, and supporting each recommendation with written documentation. Consensus of the consultants is not required. The individual consultants will report to us on their findings with respect to individual applications and will provide the basis for decisions as to the approval or disapproval of such applications.

In approving facilities, we will compare the facility's submission against the criteria specified in this notice. The approval granted will be for a three year period and extensions of approval will require submission of a continuation application and will not be automatic.

In addition to reviewing applications, the individual expert consultants may propose specific changes to the coverage criteria. Finally, in certain limited cases, exceptions to the strict criteria proposed may be warranted if there is justification and if the facility ensures our objectives of safety and efficacy. Under no circumstances will exceptions be made for facilities whose transplant programs have been in existence for less than two years, and applications from consortia will not be approved. In these two cases, disapprovals will be made by HCFA and will not require prior reviews by the expert consultants. Additionally, exceptions on the basis of geographic considerations will not be granted.

C. Application Procedure

In order to facilitate the approval of qualified facilities, we announced in the proposed notice that we would begin accepting and reviewing applications from facilities that believed they were qualified based on the proposed criteria. Because the applications will be approved only on the basis of the criteria published in this final notice, facilities which have submitted applications prior to the publication date of this final ruling April 6, 1987, have the opportunity to submit any necessary revision and additions to their applications.

A facility that seeks retroactive approval must show that it met the experience and survival criteria on the date to which it seeks retroactive approval, as well as show its experience and survival to the stated fiducial date.

The applications procedure is as follows: 1. An original and two copies of the application must be submitted on 8½ by 11 inch paper, signed by a person authorized to do so. The facility must be a participating hospital under Medicare and must specify its provider number, and the name and telephone number of an individual we could contact should we have questions regarding the application.

2. Information and data must be clearly stated, well organized and appropriately indexed to aid in its review against the criteria specified in this notice. Each page must be numbered.

3. To the extent possible, the application should be organized into eight sections corresponding to each of the eight major criteria and addressing, in order, each of the sub-criteria identified.

4. The application should be mailed to the address below in a manner which provides the facility with documentation that it was received by us.

Administrator, Health Care Financing Administration, c/o Office of Executive Operations, Room 777 East High Rise, 6325 Security Blvd., Baltimore, Maryland 21207.

D. Guidelines for Patient Selection Criteria

Included in section V.A., Criteria for Facilities, is the requirement that a facility must have adequate written patient selection criteria and an implementation plan for their application. Such criteria should include or be comparable to, but need not be limited to, the guidelines below that indicate the type of factors or areas we would like to see addressed. We expect to disapprove any facility that departs so significantly from the guidelines that Medicare beneficiaries would be placed at risk.

1. Patient selection criteria must be based upon both a critical medical need for transplantation and a maximum likelihood of successful clinical outcome.

2. The patient must have a very poor prognosis (for example, less than a 25 percent likelihood of survival for six months) as a result of poor cardiac status, but must otherwise have a good prognosis.

3. All other medical and surgical therapies that might be expected to yield both short- and long-term survival (for example, 3 or 5 years), comparable to that of cardiac transplantation, must have been tried or considered.

4. Many factors must be recognized at the present time to exert an adverse influence on the outcome after cardiac transplantation. The manner and extent to which adverse risk is translated into contraindication varies. A patient who meets patient selection criteria under section D. 2., 3., and 5., and is free of the adverse factors under this section 4a. and b., is considered a good candidate for cardiac transplantation. Some experts would not require freedom from all adverse factors under this section 4b. We recognize that some who may not be considered "good candidates" may also benefit, but the likelihood or extent of benefit is significantly less.

a. Strongly adverse factors include: (1) Advancing age; for example, a patient beyond 53 to 57 years of age (the mid 50's). Until not long ago, limited experience with patients over age 50 showed that these patients had both impaired capacity to withstand post-operative and immunosuppressive complications and lessened survival. More recently, carefully selected patients through age 55 have had good survival experience; but experience with patients beyond age 55 is limited. The selection of any patient for transplantation beyond age 50 must be done with particular care to ensure an adequately young "physiologic" age and the absence or insignificance of coexisting disease.

(2) Severe pulmonary hypertension (because of the limited work capacity of the typical donor right ventricle which is an important consideration in orthotopic cardiac transplantation). Generally, pulmonary vascular resistance above 5 Wood units or pulmonary artery systolic pressure over 65 mm Hg is a serious adverse factor. However, these patients may be acceptable if a pulmonary vasodilator drug reduces both pulmonary vascular resistance below 3 Wood units and pulmonary artery systolic pressure below 50 mm Hg.

(3) Renal or hepatic dysfunction not explained by the underlying heart failure and not deemed reversible (because of the nephrotoxicity and hepatotoxicity of cyclosporine). For patients who are to receive azathioprine and high-dose corticosteroid rather than cyclosporine, a slightly higher level of hepatic or renal dysfunction is acceptable, but substantial dysfunction is still a contraindication (because of the likelihood of early exacerbation postoperatively and because of interference with immunosuppressive regimens).

(4) Acute severe hemodynamic compromise at the time of transplantation if accompanied by compromise or failure of one or more vital end-organs (because of a substantially less favorable prognosis for survival than for the average transplant recipient).

(5) Symptomatic peripheral or cerebrovascular disease (because of accelerated progression in some patients after cardiac transplantation and on chronic corticosteroid treatment).

(6) Chronic obstructive pulmonary disease or chronic bronchitis (because of poor postoperative course and likelihood of exacerbation of infection with immunosuppression).

(7) Active systemic infection (because of the likelihood of exacerbation with initiation of immunosuppression).

(8) Recent and unresolved pulmonary infarction, pulmonary roentgenographic evidence of infection, or of abnormalities of unclear etiology (because of the likelihood that this represents pulmonary infection).

(9) Systemic hypertension, either at transplantation or prior to development of end-stage heart disease, that required multi-drug therapy for even moderate control (for example, multidrugs to bring diastolic pressure below 105 mm Hg) for patients who would be on cyclosporine protocols (because of the substantial exacerbation of hypertension with cyclosporine and the difficulty of its management).

(10) Any other systemic disease considered likely to limit or preclude survival and rehabilitation after transplantation.

(11) Cachexia, even in the absence of major end organ failure (because of the significantly less favorable survival of these patients).

(12) The need for or prior transplantation of a second organ such as lung, liver, kidney, or marrow (because this represents the coexistence of significant disease, and because multi-organ transplantation must still be considered experimental).

(13) A history of a behavior pattern or psychiatric illness considered likely to interfere significantly with compliance with a disciplined medical regimen (because a lifelong medical regimen is necessary, requiring multiple drugs several times a day, with serious consequences in the event of their interruption or excessive consumption).

(14) The use of a donor heart, that may have had its effectiveness compromised by such factors as the use of substantial vasopressors prior to its removal from the donor, its prolonged or compromised maintenance between the time of its removal from the donor and its implantation into the patient, or pre-existing disease.

b. Other factors given less adverse weight by some experts but considered importantly adverse by others include:

(1) Insulin-requiring diabetes mellitus, in the judgment of most experts (because the diabetes is often accompanied by occult vascular disease and because the diabetes and its complications are exacerbated by chronic corticosteroid therapy; even current cyclosporine immunosuppression regimens require chronic long-term corticosteroid, though at a lower dose, and high dose corticosteroid is used in the treatment of acute rejection).

(2) Asymptomatic severe peripheral or cerebrovascular disease (because of accelerated progression in some patients after cardiac transplantation and on chronic corticosteroid treatment).

(3) Documented peptic ulcer disease (because of the likelihood of early postoperative exacerbation).

(4) Current or recent history of diverticulitis (which must be considered a source of active infection that may be exacerbated with the initiation of immunosuppressant).

5. Plans for long-term adherence to a disciplined medical regimen must be feasible and realistic for the individual patient.

## VI. Regulatory Impact Analysis

### *A. Introduction*

Executive Order 12291 requires us to prepare and publish a final regulatory impact analysis for any document such as this that meets one of the executive order criteria of a "major rule"; that is, it is likely to result in:

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In addition, we prepare and publish a final regulatory flexibility analysis, consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through, 612), for documents such as this, unless the Secretary certifies that implementation will not have a

significant economic impact on a substantial number of small entities.

Implementation of this proposal is not likely to have an annual economic effect exceeding $100 million, or result in a major increase in costs or prices. However, it will affect all facilities that consider themselves capable of performing heart transplants. These facilities are considered small entities under the Regulatory Flexibility Act.

*B. Affected Entities*

In the initial impact analysis, we stated that in calendar year 1985 there were 72 facilities that characterized themselves as heart transplant facilities and that had performed at least one heart transplant. As a result of applying our selection criteria, we expected that approximately ten facilities would initially be approved for Medicare coverage with a total of about 20 facilities receiving Medicare approvals a year later.

*Comment:* One commenter asked whether our estimate of ten hospitals receiving immediate approval reflected our judgement on the number of facilities meeting the selection criteria or if this reflected the minimum number of facilities we believe were required in order to meet the demand for Medicare heart transplants.

*Response:* The estimate of ten hospitals receiving initial approval for Medicare heart transplant coverage was our best guess of the number of hospitals that will immediately meet the determination criteria. It should be noted, however, that this estimate was developed primarily for the purpose of estimating the costs of covering heart transplants and was not intended to be a judgement on the number of hospitals capable of meeting the coverage criteria. That is, we do not have any advance information on which facilities will apply or meet the criteria.

*Comment:* A number of commenters expressed concern that as a result of establishing qualifying criteria for selecting heart transplant centers, we will be giving the facilities that qualify a significant advantage. Qualifying facilities, the commenters point out, will gain significant amounts of Medicare revenues at the expense of non-qualifying facilities. Also, one commenter argued that the prestige of being selected as a Medicare heart transplant center will help those hospitals to increase their share of related cardiovascular markets. Moreover, commenters were concerned that other third party payers may adopt Medicare's selection criteria, thus virtually shutting those facilities that do not meet the Medicare criteria out of the heart transplant market.

*Response:* These commenters have a legitimate concern, but we do not believe the effects of these criteria will be as drastic as they suggest. As we stated in the initial impact analysis, hospitals meeting the selection criteria for Medicare coverage of heart transplant may well increase their share of the transplant market and the added prestige of being an approved Medicare heart transplant center also could result in other benefits accruing to those facilities. We stated that noncertified facilities would view our coverage policy as having a potentially negative effect on them.

We do not, however, agree that the economic consequences for failing to be approved for Medicare are as serious as the commenters believe. We are not convinced that other third party payers will automatically fall into line with our coverage criteria. While some State Medicaid programs that either already cover or will cover heart transplants may adopt our coverage standards, they are not required to do so. The Blue Cross Association is an example of one major third party payer that has adopted hospital selection criteria for its member plans that are somewhat less restrictive than ours. Consequently, their policy may permit a number of hospitals that fail to meet our standards to be covered by Blue Cross payment plans.

In view of the small number of Medicare patients we anticipate will receive heart transplants, compared to the number of non-Medicare heart transplant cases, hospitals failing to meet the Medicare coverage requirements but which are able to meet standards established by other payers may not experience any adverse impact. To illustrate the relative sizes of the Medicare and non-Medicare markets, we estimate, that there will be, at most, 98 Medicare heart transplant cases for FY 1988, the first full year of coverage. By contrast, the number of non-Medicare cases for the same period is expected to be about 1900 cases. Thus, Medicare's share of the total heart transplant market is expected to be only about five percent. Clearly, hospitals that fail to meet the Medicare coverage criteria but meet the criteria of other insurers may enjoy significant benefits and may not be affected at all by failure to meet our criteria, depending on the distribution of Medicare and non-Medicare cases.

Nevertheless, should most or all third party payers eventually adopt our policy, it may, indeed, adversely affect those facilities that fail to meet the criteria. Yet, we must point out that we have no authority to regulate private insurers, nor to limit any decision they may make to adopt policies similar to our own. If such conformance were to occur, we believe it would merely reflect a general medical consensus that might have formed even if we had not addressed the issue.

*C. Impact on Beneficiaries*

In the initial impact analysis, we pointed out that because of Medicare eligibility requirements we did not expect that many Medicare beneficiaries to become suitable candidates for heart transplants. Either the age requirements or the long waiting period for persons with disabilities would tend to reduce the number of potential heart transplant recipients eligible for Medicare

*Comment:* Several commenters expressed concern that the restrictive nature of our facility selection criteria will result in beneficiaries having to travel long distances from their homes and having, as a result, to incur higher travel and accommodation expenses in order to receive a heart transplant. These commenters argue that if our criteria were more lenient, more hospitals in more areas of the country could be certified to perform heart transplants. Beneficiaries would then not have to travel as far to receive service and would not, therefore, have to incur the higher personal expenses.

*Response:* We acknowledged in our initial impact analysis that our policy was fairly restrictive. We believe, however, that our approach is justified on the basis of our concern for patient safety and the success rates currently achievable with this type of procedure. Furthermore, we believe the benefit of affording beneficiaries the opportunity of undergoing this type of procedure with a very reasonable assurance of a successful outcome must be weighed against the possibility of somewhat higher personal expenses.

*D. Alternatives Considered*

In the initial analysis, we considered the alternatives of either:

- Continuing not to cover heart transplants; or
- Allowing all Medicare participating hospitals to establish transplant programs without additional facility criteria, although requiring the use of patient selection criteria.

We continue to reject the first alternative because we have now determined that heart transplants, when performed in accordance with the proposed criteria, are medically

reasonable and necessary and meet the requirements for Medicare coverage.

Our major reason for continuing to reject the second alternative is that it would permit uncontrolled proliferation of transplant facilities, thus raising all the concomitant questions about quality of services, given the limited availability of donor organs and experienced transplant teams. Although adoption of this policy alternative would help in the faster proliferation of this treatment modality among the approximately 200 hospitals that could be interested in qualifying over the next five years, the diffusion of this procedure over such a broad base is likely to lower the experience level and would probably lead to lower success and survival rates among Medicare heart transplant patients. Our responsibilities for the well-being of Medicare beneficiaries and for the prudent expenditure of Medicare trust funds dictate that we pursue a cautious policy with respect to a procedure as complex as heart transplantation.

*E. Summary and Final Expenditure Estimate*

In the initial impact analysis, we discussed in some detail the difficulties of estimating the costs of covering heart transplants. The major problem was in accurately estimating the number of suitable Medicare eligible candidates for the procedure. As a result of this uncertainty in our projections, we presented a high and a low cost estimate for each of the five successive fiscal years. The differences between the two projections reflected different assumptions about the growth rate of Medicare heart transplant candidates. We also assumed that once Medicare began covering heart transplants, all State Medicaid programs that currently do not cover this procedure would do so within the next five years.

We did not receive any comments on our cost estimates. Thus, the only change we are making in our final cost projections is to reflect the enactment of section 9335(c) of Pub. L. 99–509 that amended section 1861(s)(2) of the Act. This provision allows for the payment for immunosuppressive drugs that are required in connection with a covered organ transplant for a one year period following the transplantation. In the initial cost estimates, we assumed the cost of immunosuppressive drugs would be covered over the life of the patient. As a result of the enactment of Pub. L. 99–509, we are lowering the high cost estimate for FY 1991 from $25 million to $20 million. The following table presents our minimum and maximum estimates in the growth of Medicare expenditures and the Federal share of Medicaid expenditures for the coverage of heart transplants through FY 1991.

PROJECTED INCREASES IN HEART TRANSPLANT EXPENDITURES

| | Fiscal year | | | | |
|---|---|---|---|---|---|
| | 1987 | 1988 | 1989 | 1990 | 1991 |
| Federal Expenditures (rounded to nearest $5 million) | | | | | |
| Medicare Low | (1) | (1) | (1) | (1) | (1) |
| Medicare High | 5 | 10 | 15 | 20 | 20 |
| Medicaid | (1) | (1) | 5 | 5 | 5 |

[1] Less than $2.5 million.

In conclusion, we have examined two alternative approaches to the coverage of heart transplants and the concerns raised by commenters. We acknowledged in our responses to comments that non-qualifying hospitals might be disadvantaged financially as a result of hospital selection criteria. However, we pointed out that patient safety and the need for the judicious expending of Medicare trust funds dictates the careful selection of facilities. Thus, we are maintaining the policy we proposed in our October 17 notice. Nevertheless, as we state elsewhere in this notice, the expert consultants may, under certain circumstances, recommend exceptions to the criteria. Also, we will be reviewing the selection criteria over the next three years and revising them based on new data and changes in the technology and methods of performing this procedure.

**VII. Waiver of 30-Day Delay in Effective Date**

In the Notice of Proposed Rulemaking published on October 17, 1986, we proposed to make the effective date of coverage of heart transplants the date of publication of the proposed notice (that is, October 17, 1986). Coverage as of October 17, 1986 would be effective only for those facilities which would have qualified as heart transplant facilities when the transplant was performed and whose applications are received by HCFA within 90 days of the **Federal Register** publication of this final notice announcing our policy (that is, July 6, 1987). The effective date of coverage for heart transplants performed at facilities applying after July 6, 1987, will be the date the facility receives approval from HCFA as a heart transplant facility.

**VIII. Paperwork Burden**

This final notice contains information collection requirements that are subject to Office of Management and Budget review under the Paperwork Reduction Act of 1980. Specifically, facilities that wish to obtain approval for Medicare coverage of heart transplantation services must submit an application and documentation pertinent to the transplantation services We submitted a copy of this proposed notice to the Executive Office of Management and Budget (EOMB) for its review of these information collection requirements. EOMB has approved the information collection requirements contained in this proposed notice under OMB Control No. 0938–0490.

(Secs. 1102, 1862(a)(1) and 1871 of the Social Security Act (42 U.S.C. 1302, 1395y(a)(1) and 1395hh))

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare-Hospital Insurance Program)

Dated: March 20, 1987.

**William L. Roper,**

*Administrator, Health Care Financing Administration.*

Approved: March 30, 1987.

**Otis R. Bowen,**

*Secretary.*

[FR Doc. 87–7490 Filed 4–3–87; 8:45 am]

BILLING CODE 4120-01-M

## Office of Human Development Services

### Administration for Children, Youth, and Families; Head Start Name and Logo Trademark Registration

**AGENCY:** Administration for Children, Youth and Families (ACYF), Office of Human Development Services (OHDS), Department of Health and Human Services (DHHS).

**ACTION:** Notice of Trademark Registration for Head Start Name and Logo.

**SUMMARY:** This Administration for Children, Youth and Families' Notice provides information and instructions to all Head Start grantees and delegate agencies and the general public on the use of the Head Start name and logo.

**EFFECTIVE DATE:** April 6, 1987.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert M. Foster, Director, Program Operations Division, ACYF/Head Start Bureau, P.O. Box 1182, Administration for Children, Youth and Families, Washington, DC 20013, (202) 755–8208.

**SUPPLEMENTARY INFORMATION:**

**A. General**

The name "Head Start" was officially registered by the United States Commission of Patents and Trademarks on February 25, 1986, and was provided U.S. Trademark Registration Certificate No. 1,384,264. On March 11, 1986, the Head Start logo was registered officially and provided U.S. Trademark Certificate Registration No. 1, 385,972.

The terms of the registrations are for twenty (20) years from those dates and can be renewed for subsequent 20-year terms at the appropriate time.

The registered trademark symbol, (R), must appear by the name and logo at all times. It is not necessary for grantees and delegate agencies to discard their current inventory of material. However, grantees must add the trademark symbol when materials are reprinted.

**B. Authorized Users**

The Head Start Bureau authorizes local Head Start grantees and delegate agencies to use the name and logo without further approval on stationery, posters, recruitment literature, newsletters and other promotional items designed to inform the local community of Head Start activities.

**C. Use of Head Start Name or Logo on Items for Manufacture, Sale or Distribution**

Only Head Start grantees, delegate agencies, and organizations that receive Head Start contracts, as well as non-profit organizations which represent Head Start programs, such as State or National Head Start Associations, may use the Head Start name and logo on items they sell or distribute. However, these organizations must obtain prior approval for the use of the Head Start name or logo from the Head Start Bureau. Grantees must treat profits from such sales as program income and report the proceeds on the SF-269. Grantees requesting approval to manufacture, sell or distribute items bearing the Head Start name or logo must identify at least one of the three additional cost alternatives to be used as stipulated in 45 CFR 74.42.

**D. Approval**

Requests to manufacture, sell or distribute items bearing the Head Start name or logo must be submitted at least sixty (60) days prior to the anticipated date of sale or distribution. Approved requests will be effective for a period not to exceed three years and only for those items for which such written approval was granted. Requests for approval should be sent to: Mr. William McCarron, Chief, Discretionary Grants Management Branch, Office of Human Development Services, 200 Independence Avenue SW., Room 345-F, Washington, DC 20201.

**E. Restrictions**

Unless otherwise approved, all unauthorized individuals, organizations and commercial firms must discontinue manufacturing, selling or distributing materials bearing either the Head Start name or logo on the effective date of this notice.

Unauthorized use of the Head Start name or logo should be reported immediately so that appropriate legal action can be taken. Reports of unauthorized use should be sent to: Mr. Clennie H. Murphy, Jr., Acting Associate Commissioner, Administration for Children, Youth and Families, Head Start Bureau, P.O. Box 1182, Washington, DC 20013.

Dated: March 6, 1987.

**Dodie Livington,**

*Commissioner, Administration for Children, Youth and Families.*

Approved: March 31, 1987.

**Jean K. Elder, Ph.D.,**

*Assistant Secretary for Human Development Services-Designate.*

[FR Doc. 87-7496 Filed 4-3-87; 8:45 am]

BILLING CODE 4130-01-M

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of the Secretary

**[Docket No. D-87-834; FR-2342]**

### Delegation of Authority With Respect to the Solar Energy and Energy Conservation Bank Act

**AGENCY:** Office of the Secretary, HUD.

**ACTION:** Notice of delegation of authority.

**SUMMARY:** The Secretary is transferring authority with respect to the Solar Energy and Energy Conservation Bank (SEECB) to the Office of the Assistant Secretary for Community Planning and Development.

**EFFECTIVE DATE:** March 2, 1987.

**FOR FURTHER INFORMATION CONTACT:** Grant E. Mitchell, Assistant General Counsel for Fiscal Management and Energy Programs, Room 10248, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 755-6550. (This is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:** The Solar Energy and Energy Conservation Bank which was established by Part 1, Subtitle A, Title V of the Energy Security Act of 1980 (12 U.S.C. 3602 through 3620), terminates according to its terms on September 30, 1987. No appropriations have been made for the Bank since FY 1985 and none are anticipated. All funds of the Bank have been committed. The President of the Bank has resigned as of February 28, 1987. The Secretary therefore deems it appropriate to delegate all necessary executive and administrative functions to the Assistant Secretary for Community Planning and Development.

**Section A. Authority Delegated**

The Assistant Secretary for Community Planning and Development is authorized to exercise the power and authority of the Secretary of Housing and Urban Development regarding the Solar Energy and Energy Conservation Bank, so long as executive and administrative functions remain outstanding. In addition, pursuant to Solar Energy and Energy Conservation Bank Resolution No. 3 of July 22, 1980 creating the position of Manager of the Bank, the Assistant Secretary for Community Planning and Development is also appointed as Manager of the Bank, to serve in such position until the termination of the Bank on September 30, 1987.

**Section B. Authority to Redelegate**

The Assistant Secretary for Community Planning and Development is authorized to redelegate to employees under his jurisdiction any power and authority delegated under Section A of this delegation, including the ability to act as Manager of the Bank, except the power and authority to issue rules and regulations.

Authority: Sec. 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: April 1, 1987.

**Samuel R. Pierce, Jr.,**

*Secretary.*

[FR Doc. 87-7575 Filed 4-3-87; 8:45 am]

BILLING CODE 4210-32-M

**[Docket No. D-87-833; FR-2336]**

### Office of the Assistant Secretary for Community Planning and Development; Redelegation of Authority To Execute Legal Instruments in the Name of the Secretary

**AGENCY:** Office of the Assistant Secretary for Community Planning and Development, HUD.

**ACTION:** Amendment of notice of redelegation of authority.

**SUMMARY:** The Assistant Secretary for Community Planning and Development, on July 26, 1982 redelegated authority to execute written instruments relating to section 312 Rehabilitation Loans to certain officials, 47 FR 33324, August 2, 1982. Subsequent redelegations added other officials, 50 FR 13667, April 5, 1985 and 51 FR 5412, February 13, 1986. This amendment adds to the officials with this authority the Director, Rehabilitation Loans and Homesteading Division, removes the reference to the Deputy Director of the Office of Urban Rehabilitation, and supersedes previous redelegations.

**FOR FURTHER INFORMATION CONTACT:** David Cohen, Director, Office of Urban Rehabilitation, Room 7170, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, [202] 755-5685 [this is not a toll-free number].

**SUPPLEMENTARY INFORMATION:** Under section 312 of the Housing Act of 1964, 42 U.S.C. 1452b, the authority to execute legal instruments under the section 312 Loan Program has been delegated to the Assistant Secretary for Community Planning and Development, except for those legal instruments which relate to the property management and disposition functions delegated to the Assistant Secretary for Housing, 48 FR 49384, October 25, 1983. In order to expedite property foreclosures and judgments against section 312 borrowers in default, the Assistant Secretary for Community Planning and Development has determined that his authority to execute legal instruments should be redelegated to the Office of Urban Rehabilitation.

Accordingly, the Assistant Secretary's redelegation of July 26, 1982, 47 FR 33324, as amended, is further amended as follows:

### A. Authority Redelegated

The Deputy Assistant Secretary for Program Management, Office of Community Planning and Development; the Director of the Office of Urban Rehabilitation; the Director, Rehabilitation Loans and Homesteading Division; and the Rehabilitation Program Specialist appointed as Government Technical Representative to the section 312 Loan Servicing Contract, (all in the Office of Urban Rehabilitation) are hereby redelegated the authority to execute in the name of the Secretary written instruments relating to Section 312 Rehabilitation Loans, including deeds of release, substitutions of trustees, compromises, write-offs, assignments, and satisfactions of notes, mortgages, deeds of trust, and other security instruments. However, this redelegation does not cover the execution of written instruments that relate to certain section 312 loan-related property management and disposition functions that have been delegated to the Assistant Secretary for Housing (see 45 FR 54143, August 14, 1980).

### B. Redelegations Superseded

This redelegation supersedes the redelegation of authority to execute legal instruments under the section 312 program published at 47 FR 33324, August 2, 1982; 50 FR 13667, April 5, 1985; and 51 FR 5412, February 13, 1986.

**Authority:** Sec. 312 of the Housing Act of 1964, 42 U.S.C. 1452b, and section C, Delegation of Authority, 48 FR 49384, October 25, 1983.

Dated: March 30, 1987.

**Jack R. Stokvis,**

*Deputy Assistant Secretary for Community Planning and Development.*

[FR Doc. 87-7517 Filed 4-3-87; 8:45 am]

BILLING CODE 4210-29-M

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**[Docket No. N-87-1690]**

## Office of Administration; Submission of Proposed Information Collections to OMB

**AGENCY:** Office of Administration, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposals.

**ACTION:** Interested persons are invited to submit comments regarding these proposals. Comments should refer to the proposal by name and should be sent to: John F. Morrall, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 755-6050. This is not a toll-free number.

**SUPPLEMENTARY INFORMATION:** The Department has submitted the proposal described below for the collection of information to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of hours needed to prepare the information submission; (8) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Copies of the proposed forms and other available documents submitted to OMB may be obtained from David S. Cristy, Reports Management Officer for the Department. His address and telephone number are listed above. Comments regarding the proposal should be sent to the OMB Desk Officer at the address listed above.

The proposed information collection requirement is described as follows:

### Notice of Submission of Proposed Information Collection to OMB

Proposal: Outline Specifications, 24 CFR 841

Office: Public and Indian Housing.

Description of the Need for the Information and Its Proposed Use: This form is prepared by architects employed by PHAs or by Turnkey Developers to establish quality and type of materials and equipment to be incorporated into housing developments. It is used by the PHA and HUD to determine that specified items comply with codes and HUD standards and are appropriated in the project.

Form number: HUD-5087.

Respondents: State or Local Governments and Non-Profit Institutions.

Frequency of Respondents: On Occasion.

Estimated Burden Hours: 2,641.

Status: Extension.

Contact: William C. Thorson, HUD, (202) 755-6460; John F. Morrall, OMB, (202) 395-6880.

**Authority:** Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; sec. 7(d) of the Department of Housing and Urban Development Act 42 U.S.C. 3535(d).

Dated: March 31, 1987.

**John T. Murphy,**

*Director, Information Policy and Management Division.*

**Submission of Proposed Information Collection to OMB**

Proposal: Housing Development Grant Application.
Office: Housing.
Description of the Need for the Information and Its Proposed Use: Cities, counties, general-purpose political subdivisions of a state, Indian tribes, and states applying on behalf of general local government may submit an application(s) under the Housing Development Grant Program. All applications are reviewed and competitively ranked by HUD for award of grant funds.
Form number: HUD–90031 and 90031A.
Respondents: State or Local Governments.
Frequency of Respondents: On Occasion and Other.
Estimated Burden Hours: 16,400.
Status: Reinstatment.
Contact: Jessica A. Franklin, HUD (202) 755–6142; John F. Morrall, OMB, (202) 395–6880.

**Authority:** Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; sec. 7(d) of the Department of Housing and Urban Development Act 42 U.S.C. 3535(d).

Dated: March 31, 1987.

**John T. Murphy,**

*Director, Information Policy and Management Division.*

[FR Doc. 87–7574 Filed 4–3–87; 8:45 am]

BILLING CODE 4210–01–M

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[OR–050–4322–02:GP7–152]**

### Prineville District Advisory Council Meeting

Notice is hereby given in accordance with Pub. L. 94–579 and 43 CFR Part 1780 that a meeting of the Prineville District Advisory Council will be held on May 14, 1987. The meeting agenda will cover the John Day River Management Plan, the Brothers/LaPine Resource Management Plan planning process, the BLM organization study for Oregon/Washington, the District land exchange status and an update on the Wilderness Study Program.

The public is welcome to attend. Persons wishing to testify before the Advisory Council should contact the District Manager at 185 East 4th Street, Prineville, OR 97754, phone (503) 447–4115 by May 11, 1987.

Dated: March 30, 1987.

**James L. Hancock,**

*District Manager.*

[FR Doc. 87–7503 Filed 4–3–87; 8:45 am]

BILLING CODE 4310–33–M

**[CO–010–07–4322–17]**

### Craig, CO; Advisory Council Meeting

In accordance with Pub. L. 94–579, notice is hereby given that there will be a meeting of the Craig District Advisory Council on May 20, 1987, at 10 a.m. at the Craig District Office, 455 Emerson Street, Craig, Colorado.

Agenda items will include:

1. Elections of chairperson and vice-chairperson.
2. Noxious weed control.
3. Proposed Sand Wash races.
4. Little Snake Resource Management Plan protests.

The meeting will be open to the public; interested persons may make oral statements at 10:30 a.m. Summary minutes of the meeting will be maintained in the Craig District Office.

Dated: March 16, 1987.

**William J. Pulford,**

*District Manager.*

[FR Doc. 87–7468 Filed 4–3–87; 8:45 am]

BILLING CODE 4310–JB–M

**[WY–930–07–4220–10; W–101899]**

### Proposed Withdrawal and Opportunity for Public Meeting Sweetwater County, WY

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The Bureau of Land Management proposes to withdraw 357.34 acres of public land for protection of the Natural Corrals archaeological site near Superior, Wyoming. This notice closes the land for up to 2 years from surface entry and mining. The land will remain open to mineral leasing.

**DATE:** Comments and requests for a public meeting should be received by July 6, 1987.

**ADDRESS:** Comments and meeting requests should be sent to: Wyoming State Director, Bureau of Land Management, P.O. Box 1828, Cheyenne, Wyoming 82003.

**FOR FURTHER INFORMATION CONTACT:** Tamara J. Gertsch, BLM Wyoming State Office, (307) 772–2072.

On March 26, 1987, a petition was approved allowing the Bureau of Land Management to file an application to withdraw the following described public land from settlement, sale, location, or entry under the general public land laws, including the mining laws, subject to valid existing rights:

**Sixth Principal Meridian**

T. 21 N., R. 101 W.,
Sec. 18: Lots 1–3, W½NE¼, E½NW¼, NE¼SW¼, NW¼SE¼.

The area described contained 357.34 acres in Sweetwater County. The purpose of the proposed withdrawal is the protection of the archaeological, geological, and recreational values of the Natural Corrals site.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the Wyoming State Director of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the Wyoming State Director within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR Part 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the lands will be segregated as specified above unless the application is denied or cancelled or the withdrawal is approved prior to that date. The temporary uses which will be permitted during this segregative period are only those which are specifically allowed by the authorized officer of the Bureau of Land Management.

**F. William Eikenberry,**

*Associate State Director.*

[FR Doc. 87–7492 Filed 4–3–87; 8:45 am]

BILLING CODE 4310–22–M

**[WY–930–07–4220–11; W–79284, W–72985]**

### Wyoming: Amended Notice of Proposed Withdrawal

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The following described lands which are withdrawn by the

Department of the Army are not proposed for continuation as was published in Federal Register Document 84–14807, Page 23123 which published on June 4, 1984.

Sixth Principal Meridian

T. 33 N., R. 99 W.,
Sec. 10, SW¼SW¼.

This action will reduce the acreage proposed for continuation to 1320 acres.

**FOR FURTHER INFORMATION CONTACT:** Chief, Branch of Land Resources, Bureau of Land Management Wyoming State Office P.O. Box 1828, Cheyenne, WY 82003.

**Hillary A. Oden,**

*State Director.*

[FR Doc. 87–7501 Filed 4–3–87; 8:45 am]

BILLING CODE 4310-22-M

## Fish and Wildlife Service

### Endangered Species Convention; Foreign Law Notification, Argentina

**AGENCY:** Fish and Wildlife Service; Interior.

**ACTION:** Notice of information No. 13.

Subject: Argentina—Ban on trade in some species.

**This is a Schedule II Notice**

*Source of Foreign Law Information*

On May 7, 1986, by Notification to the Parties No. 384, the Secretariat, Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), advised all Cites Management Authorities, including that of the United States, of a communication received by the Secretariat from the Management Authority of Argentina. Copies of Resolution 24, effective February 23, 1986, and of Resolutions 62 and 63, effective March 14, 1986, of the government of Argentina accompanied the Notification from the Secretariat.

*Action by the Fish and Wildlife Service*

Argentina Resolution No. 63 prohibits from export from Argentina after March 14, 1986, all specimens, including live animals and parts and derivatives, of the following species: *Felis jacobita, Felis pardalis mitis, Felis tigrinus,* and *Felis wiedii,* all of which are listed as endangered under the U.S. Endangered Species Act, as well as *Felis colocolo, Felis concolor, Felis geoffroyi, Felis guigna, Felis yagouaroundi,* and *Panthera onca.* All imports into the United States of any of these species, or their parts or derivatives, which declare Argentina as country of origin and a date of export on or after March 14, 1986, are illegal.

Argentina Resolution No. 24 prohibits the export from Argentina of *Boa constrictor occidentalis, Eunectes notaeus* and *Rhea americana* on or after August 22, 1986. All imports into the United States of any of these species, or their parts or derivatives, which declare Argentina as country of origin and date of export on or after August 22, 1986, are illegal.

Argentina Resolution No. 62 provides that only mammals, birds and reptiles listed by Argentina in Chapter VII of Argentina Decreto No. 691 of March 21, 1981, or wildlife declared by Argentina as harmful, or bred in captivity in Argentina-registered establishments may be legally exported. All imports into the United States of any other live mammals, birds or reptiles native to Argentina is prohibited after September 5, 1986, without proof of legal export in compliance with Argentina Resolution No. 62.

Without proof of legal export from Argentina in accordance with Resolutions 24, 62, 63, import of wildlife into the United States may be illegal. Specimens, parts and products imported in violation of Argentina law will be refused clearance and/or seized and forfeited.

**EFFECTIVE DATE:** May 6, 1987.

**EXPIRATION DATE:** None until further notice.

**FOR FURTHER INFORMATION CONTACT:** Nancy Roeper, Division of Law Enforcement, U.S. Fish and Wildlife Service, P.O. Box 28006, Washington, DC 20038–8006, Telephone: 202/343–9242.

Dated: March 31, 1987.

**Frank Dunkle,**

*Director.*

[FR Doc. 87–7547 Filed 4–3–87; 8:45 am]

BILLING CODE 4310-55-M

### Endangered Species Convention; Foreign Law Notification, Peru

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of Information No. 14.

Subject: Peru—Export of Parrots.

**This is a Schedule II Notice**

Wildlife subject to this notice is subject to detention, to refusal of clearance, or to seizure and forfeiture, if imported into the United States.

**Source of Foreign Law Information**

On May 7, 1986, by Notification to the Parties No. 389 the Secretariat, Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) advised all Cites Management Authorities, including that of the United States, that Peru has amended its list of parrots which Peruvian law allows to be exported from the country. The cooperation of foreign governments has been requested by Peru in enforcing its ban on export of other than listed species and Cites Management Authorities have been requested to reject exports involving species of the order Psittaciformes other than those listed.

**Action by Fish and Wildlife Service**

As of April 21, 1986, only the species *Aratinga wagleri* (red-fronted conure), *Aratinga erythrogenys* (red-masked conure), *Forpus coelestis* (Pacific parrotlet), *Bolborhynchus aurifrons* (Mountain parakeet), *Bolborhynchus orbygnesius* (Andean parakeet), and *Brotogeris pyrrhopterus* (grey-cheeked parakeet) of the order Psittaciformes may be legally exported from Peru. Imports into the United States of any other psittacine species declaring Peru as country of origin and exported from Peru on or after April 21, 1986, will be prohibited

**EFFECTIVE DATE:** May 6, 1987.

**EXPIRATION DATE:** None until further notice.

**FOR FURTHER INFORMATION CONTACT:** Nancy Roeper, Division of Law Enforcement, U.S. Fish and Wildlife Service, P.O. Box 28006, Washington, DC 20038–8006, Telephone: 202/343–9242.

Dated: March 31, 1987.

**Frank Dunkle,**

*Director.*

[FR Doc. 87–7548 Filed 4–3–87; 8:45 am]

BILLING CODE 4310-55-M

## INTERSTATE COMMERCE COMMISSION

**[Finance Docket No. 30300]**

### CSX Corporation; Control; American Commercial Lines, Inc.; (Oversight Proceeding)

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Notice of Annual oversight proceeding.

**SUMMARY:** In *CSX Corporation—Control—American Commercial Lines,* 2 I.C.C. 2d. 490, the Commission authorized the acquisition of control by several class I railroads, of American Commercial Lines (ACL) and its water carrier subsidiary, American Commercial Barge Lines Company (ACBL). The Commission also imposed reporting and oversight conditions upon

CSX and established a procedure for an oversight proceeding. These conditions are set forth in Appendix E to the consolidation decision. The reporting condition requires CSX to file financial and rate information annually for a total period of 5 years. By decision served February 28, 1986, published at 51 FR 7140 (February 28, 1986), the Commission instituted the first oversight proceeding. Public comments regarding any adverse or beneficial effects of the consolidation were sought. Also the proceeding was assigned to the Commission's Office of Hearings for a recommendation. In a decision served July 25, 1986, the presiding administrative law judge summarized the public comments and recommended that the proceeding not be reopened. It was concluded that competition in the ACBL market area is not diminished. However, as required by the decision of the Commission in 2 I.C.C. 2d 490, a second annual oversight proceeding must be instituted.

II

Any interested party may submit comments concerning the acquisition of ACBL by CSX relative to the statutory standards of 49 U.S.C. 11321. These comments are due on or before April 30, 1987. In this regard, parties seeking to reopen the proceeding based on allegations of noncompliance with statutory standards must provide evidence of specific problems flowing from the consolidation.

After receipt of public comments, the proceeding will be assigned to a presiding administrative law judge. Upon his own motion or upon request of the parties, the ALJ may order that oral hearings be held and may receive additional written and oral evidence and argument. Proceedings before the ALJ are to be completed by June 30, 1987. The ALJ then will prepare a report to the Commission which will be served on applicants and on commenting parties no later than July 31, 1987.

**DATED:** Comments are due on or before April 30, 1987.

**ADDRESSES:** Send comments referring to Finance Docket No. 30300 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423
(2) CSX's representative: G Paul Moates, 1722 Eye Street NW., Washington, DC 20006

**FOR FURTHER INFORMATION CONTACT:** Paul S. Cross, (202) 275–7474.

**SUPPLEMENTARY INFORMATION:** Additional information is contained in the Commission's decision in *CSX Corporation—Control—American Commercial Lines, Inc.*, 2 I.C.C. 2d 490.

Decided: March 16, 1987.

By the Commission, Paul S. Cross, Chief Administrative Law Judge.

**Noreta R. McGee,**

*Secretary.*

[FR Doc. 87–7497 Filed 4–3–87; 8:45 am]

BILLING CODE 7035-01-M

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**[Docket No. AB–3 (Sub-No. 60X)]**

## Missouri Pacific Railroad Company; Exemption; Abandonment in Shawnee and Osage Counties, KS

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Notice of exemption.

**SUMMARY:** The Interstate Commerce Commission exempts from the requirements of prior approval under 49 U.S.C. 10903, *et seq.*, the abandonment by the Missouri Pacific Railroad Company (MP), of 22.92 miles of its Topeka Branch between milepost 381.80 near Overbrook and milepost 404.72 near Topeka, in Shawnee and Osage Counties, KS, subject to the condition that MP continue its tariff providing a truck substituted service allowance to Overbrook for fertilizer moving to the facility of Overbrook Farmers Union Cooperative Association so long as it provides service between Overbrook and Lomax, KS, the condition that the right-of-way underlying the track be kept intact for a 180-day period to enable negotiations for acquisition of the line for public use, and further subject to standard labor protection conditions.

**DATES:** This exemption will be effective on May 6, 1987. Petitions to stay must be filed by April 16, 1987, and petitions for reconsideration must be filed April 27, 1987.

**ADDRESSES:** Send pleadings referring to Docket No. AB–3 (Sub-No. 60X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423
(2) Joseph D. Anthofer, Jeanna L. Regier, 1416 Dodge Street, Omaha, NE 68179

**FOR FURTHER INFORMATION CONTACT:** Joseph H. Dettmar, (202) 275–7245.

**SUPPLEMENTARY INFORMATION:** Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289–4357 (DC Metropolitan area) or toll free (800) 424–5403.

Decided: March 25, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons. Vice Chairman Lamboley concurred in the result with a separate expression.

**Noreta R. McGee,**

*Secretary.*

[FR Doc. 87–7499 Filed 4–3–87; 8:45 am]

BILLING CODE 7035-02-M

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## DEPARTMENT OF JUSTICE

**[Civil Action No. 84–195–L]**

## Lodging of a Consent Decree Pursuant to the Clean Water Act; Millipore Corp.

In accordance with Department Policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that a proposed Consent Decree in *United States, et al.* v. *Millipore Corporation*, Civil Action No. 84–195–L, has been lodged with the United States District Court for the District of New Hampshire, on March 26, 1987. The Consent Decree resolves an action brought by the United States under section 309 of the Clean Water Act, 33 U.S.C. 1319, against Millipore Corporation for discharging pollutants from its Jaffrey, New Hampshire plant into nearby navigable waters without a National Pollutant Discharge Elimination System ("NPDES") permit from 1972 to 1985. The State of New Hampshire had intervened as a plaintiff seeking enforcement of state law prohibiting discharges of pollutants to surface water without a state permit.

The Consent Decree requires Millipore's Jaffrey plant to comply with the requirements of its NPDES permit, State Discharge permit and Town of Jaffrey industrial user permit, all of which were issued after this lawsuit was filed. The Consent Decree establishes a sampling program to monitor compliance with these permits and establishes stipulated penalties for any violation of permit requirements. The Consent Decree prohibits Millipore from discharging pollutants from its Jaffrey plant into navigable waters except in accordance with these permits.

The Consent Decree also requires Millipore to pay civil penalties of $192,500 for its past violations. Of the total amount, Millipore shall pay $128,000 to the United States and $64,500 to the State of New Hampshire.

As part of the settlement between the State of New Hampshire and Millipore, Millipore is required to undertake a study of groundwater contamination in the vicinity of its Jaffrey plant.

For thirty (30) days from the date of publication of this notice, the

Department of Justice will receive written comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530 and should refer to *United States, et al.* v. *Millipore Corporation*, D.J. Ref. No. 90–5–1–1–2106.

The proposed Consent Decree may be examined at the Office of the United States Attorney, District of New Hampshire, Federal Building, 55 Pleasant Street, Concord, New Hampshire 03301; at the Region I Office of the Environmental Protection Agency, John F. Kennedy Federal Building, Boston, Massachusetts 02203; and at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $3.20 (10 cents per page reproduction charge) payable to the Treasurer of the United States.

**F. Henry Habicht II,**

*Assistant Attorney General, Land and Natural Resources Division.*

[FR Doc. 87–7502 Filed 4–3–87; 8:45 am]

BILLING CODE 4410–01–M

## Drug Enforcement Administration

### Importation of Controlled Substances, Application; Stephan Chemical Co.

Pursuant to section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), prior to issuing a registration under this section to a bulk manufacturer of a controlled substance in Schedule I or II, and prior to issuing a regulation under section 1002(a) authorizing the importation of such a substance, the Attorney General shall provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with § 1311.42 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on February 12, 1987, Stepan Chemical Company, Natural Products Department, 100 West Hunter Avenue, Maywood, New Jersey 07607, made application to the Drug Enforcement Administration to be registered as an importer of coca leaves (9040), a basic class of controlled substance in Schedule II.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of this basic class of controlled substance may file written comments on or objections to the application described above and may, at the same time, file a written requrest for a hearing on such application in accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street NW., Washington, DC 20537, Attention: DEA Federal Register Representatives (Room 1112), and must be filed no later than May 6, 1987.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1311.42 (b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–43746 (September 23, 1975), all applicants for registration to import a basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator of the Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42 (a), (b), (c), (d), (e), and (f) are satisfied.

Dated: March 30, 1987.

**Gene R. Haislip,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 87–7530 Filed 4–3–87; 8:45 am]

BILLING CODE 4410–09–M

### Fredric J. Sloan, M.D., Revocation of Registration

On January 13, 1987, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to Fredric J. Sloan, M.D., 1000 North Allen, Robinson, Illinois 62454. The Order to Show Cause sought to revoke his DEA Certificate of Registration AS2471249 and to deny any pending applications for registration as a practitioner under 21 U.S.C. 823(f). The proposed action was predicated on Dr. Sloan's controlled substance-related felony conviction.

The Order to Show Cause was sent to Dr. Sloan by registered mail and was returned to DEA unclaimed. A copy of the Order to Show Cause was also sent by registered mail to Dr. Sloan's residence in Heber Springs, Arkansas and was returned to DEA unclaimed. On February 10, 1987, an Arkansas State Police Diversion Investigation Unit investigator personally served Dr. Sloan's wife with a copy of the Order to Show Cause at their residence in Heber Springs, Arkansas. More than thirty days have passed since the Order to Show Cause was served and the Drug Enforcement Administration has received no response thereto. Pursuant to 21 CFR 1301.54(a) and 1301.54(d), Dr. Sloan is deemed to have waived his opportunity for a hearing. Accordingly, the Administrator now enters his final order in this matter without a hearing and based on the investigative file. 21 CFR 1301.57.

The Administrator finds that between November 1982 and December 1984, Dr. Sloan issued a number of his patients prescriptions for controlled substances. Dr. Sloan would instruct his nurse or a relative of the patient to have the prescription filled and then return to his office with the controlled substance, where he would administer some of the drug to the patient and later inject himself with what remained of the substance.

Dr. Sloan was indicted in the United States District Court, Central District of Illinois, Danville Division, and charged with five counts of knowingly and intentionally acquiring and obtaining possession of a controlled substance in violation of 21 U.S.C. 843(a)(3) and five counts of knowingly and intentionally furnishing materially false and fraudulent information in a prescription form in violation of 21 U.S.C. 843(a)(4)(a). On September 10, 1986, Dr. Sloan pled guilty to one count of knowingly and intentionally furnishing materially false and fraudulent information in a prescription form, and was subsequently convicted of such offense. This is a felony offense relating to controlled substances. Therefore, lawful grounds exist to revoke Dr. Sloan's DEA Certificate of Registration. 21 U.S.C. 824(a)(2).

Since Dr. Sloan did not offer evidence of any mitigating circumstances, the Administrator has no choice but to revoke Dr. Sloan's DEA Certificate of Registration and to deny any pending applications for registration. Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration AS2471249, previously issued to Fredric J. Sloan, M.D., be, and it hereby is revoked. The Administrator further orders that any pending applications of Dr. Sloan, for registration under the Controlled Substances Act, be, and they hereby are

denied. This order is effective [thirty days from date of publication in the **Federal Register**].

Dated: March 31, 1987.

**John C. Lawn,**

*Administrator.*

[FR Doc. 87-7531 Filed 4-3-87; 8:45 am]

BILLING CODE 4410-09-M

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[Notice (87-31)]**

### NASA Advisory Council (NAC), Aeronautics Advisory Committee (AAC); Meeting

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Aeronautics Advisory Committee.

**DATE AND TIME:** April 28, 1987, 8 a.m. to 4:45 p.m.

**ADDRESS:** National Aeronautics and Space Administration, Federal Building 10B, Room 425, 600 Independence Avenue, SW., Washington, DC 20546.

**FURTHER INFORMATION CONTACT:** Ms. Joanne O. Teague, Office of Aeronautics and Space Technology, National Aeronautics and Space Administration, Washington, DC 20546, 202/453-1887.

**SUPPLEMENTARY INFORMATION:** The NAC Aeronautics Advisory Committee was established to provide overall guidance and direction to the aeronautics research and technology activities in the Office of Aeronautics and Space Technology. The Committee, chaired by Mr. Robert B. Ormsby, is comprised of 23 members. The meeting will be open to the public up to the seating capacity of the room (approximately 50 persons including the team members and other participants).

Type of Meeting: Open.

Agenda

April 28, 1987

8 a.m.—Opening Remarks.
8:45 a.m.—Briefing on Aeronautics Program Strategy, Plans, Issues.
11 a.m.—Discussion of Action Summary from AAC/Aerospace Research and Technology Subcommittee meeting.
11:30 a.m.—Report of Ad Hoc Teams.
1:30 p.m.—Discussion of New Study Topics.
2:45 p.m.—Briefing on High Speed Transportation Study.
3:45 p.m.—Summary Session.
4:45 p.m.—Adjourn.

**Richard L. Daniels,**

*Advisory Committee Management Officer, National Aeronautics and Space Administration.*

March 30, 1987.

[FR Doc. 87-7450 Filed 4-3-87; 8:45 am]

BILLING CODE 7510-01-M

## NUCLEAR REGULATORY COMMISSION

### Advisory Committee on Reactor Safeguards, Subcommittee on Advanced Reactor Designs; Meeting

The ACRS Subcommittee on Advanced Reactor Designs will hold a meeting on April 24, 1987, Room 1046, 1717 H Street, NW., Washington, DC.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

**Friday, April 24, 1987—8:30 a.m. until the conclusion of business**

The Subcommittee will review NUREG-1226, "Development and Utilization of the NRC Policy Statement on the Regulation of Advanced Nuclear Power Plants".

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. M. El-Zeftawy (telephone 202/634-3267) between 8:15 a.m. and 5:00 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: April 1, 1987.

**Morton W. Libarkin,**

*Assistant Executive Director for Project Review.*

[FR Doc. 87-7549 Filed 4-3-87; 8:45 am]

BILLING CODE 7590-01-M

## OFFICE OF PERSONNEL MANAGEMENT

### Excepted Service

**AGENCY:** Office of Personnel Management.

**ACTION:** Notice.

**SUMMARY:** This gives notice of positions placed or revoked under Schedules A, B, and C in the excepted service, as required by civil service rule VI, Exceptions from the Competitive Service.

**FOR FURTHER INFORMATION CONTACT:** Sylvia Cole, (202) 632-6817.

**SUPPLEMENTARY INFORMATION:** The Office of Personnel Management published its last monthly notice updating appointing authorities established or revoked under the Excepted Service provisions of 5 CFR Part 213 on March 20, 1987 (52 FR 8994). Individual authorities established or revoked under Schedule A, B, or C between February 1, 1987, and February 28, 1987, appear in a listing below. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities will be published as of June 30 of each year.

**Schedule A**

The following exception is established:

*National Endowment for the Arts*

One Assistant Director for State Programs. Effective February 5, 1987.

**Schedule B**

No Schedule B exceptions were established or revoked during February.

**Schedule C**

*Department of Agriculture*

One Private Secretary to the Administrator, Federal Grain Inspection Service. Effective February 4, 1987.

One Confidential Assistant to the Assistant Secretary for Governmental and Public Affairs. Effective February 18, 1987.

*Department of Commerce*

One Special Assistant to the Assistant Secretary, National Oceanic and Atmospheric Administration. Effective February 5, 1987.

One Confidential Assistant to the Special Assistant to the Secretary. Effective February 18, 1987.

One Confidential Assistant to the Deputy Assistant Secretary for Trade Development, International Trade Administration. Effective February 18, 1987.

*Department of Defense*

One Family Program Coordinator to the Deputy Assistant Secretary of Defense for Family Support, Education and Safety. Effective February 6, 1987.

One Special Assistant for Foreign Intelligence Programs to the Assistant Secretary of Defense (Command, Control, Communications, and Intelligence). Effective February 11, 1987.

*Department of Education*

One Executive Director, Intergovernmental Advisory Council on Education, to the Deputy Under Secretary for Intergovernmental and Interagency Affairs. Effective February 4, 1987.

One Special Assistant to the Deputy Under Secretary for Intergovernmental and Interagency Affairs. Effective February 6, 1987.

One Confidential Assistant to the Deputy Under Secretary for Planning, Budget and Evaluation. Effective February 9, 1987.

One Special Assistant to the Assistant Secretary for Civil Rights. Effective February 10, 1987.

One Special Assistant to the Deputy Assistant Secretary for Student Financial Assistance Programs, Office of Postsecondary Education. Effective February 10, 1987.

One Director, Postsecondary Relations Staff, to the Deputy Assistant Secretary for Higher Education, Office of Postsecondary Education. Effective February 10, 1987.

One Staff Assistant to the Secretary's Regional Representative. Effective February 20, 1987.

One Special Assistant to the Director, Legislative Liaison Staff. Effective February 25, 1987.

One Confidential Assistant to the Commissioner, Rehabilitative Services Administration, Office of Special and Rehabilitative Services. Effective February 25, 1987.

*Department of Energy*

One Staff Assistant to the Director, Office of Communications. Effective February 3, 1987.

One Congressional Affairs Advisor to the Assistant Secretary for Defense Programs. Effective February 12, 1987.

One Staff Assistant to the Principal Deputy Assistant Secretary for Congressional, Intergovernmental, and Public Affairs. Effective February 17, 1987.

*Department of Health and Human Services*

One Special Assistant to the Deputy Commissioner, Programs, Social Security Administration. Effective February 12, 1987.

*Department of Housing and Urban Development*

One Special Projects Coordinator to the Deputy Asssistant Secretary for Policy, Financial Management and Administration, Office of Housing. Effective February 5, 1987.

One Special Assistant to the Regional Administrator-Regional Housing Commissioner. Effective February 11, 1987.

One Special Assistant to the Assistant Secretary for Public Affairs. Effective February 12, 1987.

One Special Advisor to the Deputy Assistant Secretary for Policy, Financial Management and Administration, Office of the Assistant Secretary for Housing—Federal Housing Commissioner. Effective February 12, 1987.

One Executive Assistant to the Assistant Secretary for Housing. Effective February 17, 1987.

*Department of the Interior*

One Confidential Assistant to the Director, U.S. Fish and Wildlife Service. Effective February 9, 1987.

One Special Assistant to the Assistant Secretary for Water and Science. Effective February 13, 1987.

One Special Assistant to the Commissioner of Reclamation. Effective February 20, 1987.

*Department of Justice*

One Congressional Liaison Specialist to the Director, Congressional and Public Affairs, Immigration and Naturalization Service. Effective February 10, 1987.

One Assistant Director to the Director, Office of Public Affairs. Effective February 13, 1987.

One Confidential Assistant to the Director, Congressional and Public Affairs, Immigration and Naturalization Service. Effective February 26, 2987.

*Department of Labor*

One Deputy Liaison Officer to the Deputy Under Secretary for Congressional Affairs. Effective February 24, 1987.

One Assistant to the Secretary's Representative. Effective February 24, 1987.

*Department of State*

One Special Assistant to the Assistant Secretary for Inter-American Affairs. Effective February 17, 1987.

*Department of Transportation*

One Congressional Liaison Officer to the Director, Office of Congressional Affairs, Office of the Assistant Secretary for Governmental Affairs. Effective February 18, 1987.

One Intergovernmental Liaison Officer to the Director, Office of Intergovernmental & Consumer Affairs, Office of the Assistant Secretary for Governmental Affairs. Effective February 18, 1987.

One Intergovernmental Laison Officer to the Director, Office of Intergovernmental and Consumer Affairs. Effective February 18, 1987.

*Department of the Treasury*

One Staff Assistant to the Commissioner of Customs. Effective February 12, 1987.

*Agency for International Development*

One Special Operations Assistant to the Assistant Administrator, Bureau of External Affairs. Effective February 6, 1987.

*Commission on Civil Rights*

One Special Assistant to the Commissioner. Effective February 4, 1987.

*Environmental Protection Agency*

One Staff Assistant to the Associate Administrator for Regional Operations. Effective February 3, 1987.

*Equal Employment Opportunity Commission*

One Director, Communications Staff, to the Director, Office of Communications and Legislative Affairs. Effective February 27, 1987.

*Federal Communications Commission*

One Chief, Press and News Media Division, to the Director, Office of Congressional and Public Affairs. Effective February 5, 1987.

*Federal Deposit Insurance Corporation*

One Director, Office of Legislative Affairs, to the Chairman of the Board. Effective February 9, 1987.

*Federal Emergency Management Agency*

One Director of Congressional Affairs to the Director of External Affairs. Effective February 27, 1987.

*Federal Home Loan Bank Board*

One Public Affairs Specialist to the Director of Communications. Effective February 20, 1987.

*General Services Administration*

One Confidential Assistant to the Regional Administrator. Effective February 10, 1987.

*Interstate Commerce Commission*

One Congressional Liaison Representative to the Director, Office of Legislative and Public Affairs. Effective February 20, 1987.

*National Endowment for the Arts*

One Congressional Liaison Officer to the Chairman. Effective February 6, 1987.

*National Endowment for the Humanities*

One Special Assistant to the Chairman. Effective February 6, 1987.

*National Labor Relations Board*

One Confidential Assistant to a Board Member. Effective February 3, 1987.

*Office of Personnel Management*

One Special Assistant to the Associate Director for Administration. Effective February 5, 1987.

One Special Assistant to the Director. Effective February 6, 1987.

*President's Commission on White House Fellowships*

One Confidential Assistant to the Director. Effective February 18, 1987.

*Small Business Administration*

One Special Assistant to the Regional Administrator. Effective February 9, 1987

One Special Assistant to the Assistant Administrator for Congressional and Legislative Affairs. Effective February 18, 1987.

*United States Information Agency*

One Special Assistant to the Director, Voice of America. Effective February 17, 1987.

*U.S. Tax Court*

One Trial Clerk to a Judge. Effective February 20, 1987.

*Veterans Administration*

One Confidential Assistant to the Administrator. Effective February 3, 1987.

**Authority:** 5 U.S.C. 3301, 3302; EO 10577, 3 CFR 1954–1958 Comp., P. 218.

**James E. Colvard,**

*Deputy Director.*

[FR Doc. 87–7473 Filed 4–3–87; 8:45 am]

BILLING CODE 6325-01-M

## Proposed Reinstatement of OPM Form 1312

**AGENCY:** Office of Personnel Management.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1980 (title 44, U.S.C. Chapter 35), this notice announces a request for clearance to resume collecting information for the Biennial Report of Federal Civilian Employment by Geographic Area. OPM Form 1312, Geographic Distribution of Federal Civilian Employment (or an alternative automated medium), had been used by agencies in even-numbered years until 1982 to report on Federal employees whose duty station data were not otherwise available to the Office of Personnel Management (OPM) for incorporation into the Report. Reinstatement, however, of OPM Form 1312 is being requested from OMB. OPM and executive branch agencies need the data from the Report to manage personnel programs and to evaluate personnel policy objectives. For copies of this clearance package, call William C. Duffy, Acting Agency Clearance Officer on (202) 632–7714.

**DATE:** Comments on this data collection should be received within 10 working days from the date of this publication.

**ADDRESSES:** Send or deliver comments to—

William C. Duffy, Acting Agency Clearance Officer, Office of Personnel Management 1900 E Street NW., Room 6410, Washington, DC 20415

and

Richard Eisenger, Information Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503

**FOR FURTHER INFORMATION CONTACT:** Randall T. Matke, (202) 632–5022.

U.S. Office of Personnel Management.

**James E. Colvard,**

*Deputy Director.*

[FR Doc. 87–7474 Filed 4–3–87; 8:45 am]

BILLING CODE 6325-01-M

## OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

## Trade Policy Staff Committee; Generalized System of Preferences (GSP); Deadline for Acceptance of Petitions Requesting Modification of List of Articles Eligible for Duty-Free Treatment Under the GSP and Requests To Review the GSP Status of Beneficiary Developing Countries

Notice is hereby given that, in order to be considered in the 1987 GSP annual review, all petitions to modify the list of articles eligible for duty-free treatment under the Generalized System of Preferences (GSP) and requests to review the GSP status of any beneficiary developing country must be received by the GSP Information Center no later than the close of business, Monday, June 1, 1987. The GSP provides for the duty-free importation of qualifying articles when imported from designated beneficiary developing countries. The GSP is authorized by Title V of the Trade Act of 1974, as amended, and has been implemented by Executive Order 11888 of November 24, 1975, and modified by subsequent Executive Orders and Presidential Proclamations.

### 1987 GSP Annual Review

Interested parties or foreign governments may submit petitions (1) to designate additional articles as eligible for GSP; (2) to withdraw, suspend or limit GSP duty-free treatment accorded either to eligible articles under the GSP or to individual beneficiary developing countries with respect to specific GSP eligible articles; and (3) to otherwise modify GSP coverage. Also, any person may file a request to have the GSP status of any eligible beneficiary developing country reviewed with respect to any of the designation criteria listed in subsections 502(b) or 502(c) of the Act (19 U.S. 2662 (b) and (c)).

### Identification of Product Requests With Respect to the Harmonized System Tariff Nomenclature

The Harmonized System tariff nomenclature is a new international product nomenclature developed under the auspices of the Customs Cooperation Council (CCC) for the

purpose of classifying goods in international trade. The Harmonized System is expected to be implemented by the United States and internationally on January 1, 1988, and will replace the current Tariff Schedules of the United States (TSUS) nomenclature. Product eligibility under the coverage of the GSP program is currently defined in terms of the five-digit TSUS classifications. However, upon implementation of the Harmonized System, the coverage of the GSP program will be defined in terms of the Harmonized System. Therefore, all product-related petitions must identify the product(s) of interest in terms of both the current TSUS nomenclature and the proposed Harmonized System tariff nomenclature. (See FR 44163 for information on the coversion of the GSP program to the Harmonized System Tariff Nomenclature.

**Submission of Petitions and Requests**

Petitions and requests to modify GSP treatment should be addressed to: GSP Subcommittee, Office of the U.S. Trade Representative, 600 17th Street, Room 517, Washington, DC 20506. All such submissions must conform with regulations codified in 15 CFR, Chapter XX, especially Part 2007. Information submitted will be subject to public inspection by appointment with the staff of the GSP Information Center, except for information granted "business confidential" status pursuant to 15 CFR 2003.6 and 15 CFR 2006.10. Petitions and requests must be submitted in twenty copies in English. If the petition or request contains business confidential information, twenty copies of a nonconfidential version of the submission along with twelve copies of the confidential version must be submitted. In addition, the submission containing confidential information should be clearly marked "confidential" at the top and bottom of each and every page of the submission. The version that does not contain business confidential information (the public version) should also be clearly marked at the top and bottom of each and every page (either "public version" or "nonconfidential").

Prospective petitioners and requestors are strongly advised to review the GSP regulations published in the **Federal Register** on Tuesday, February 11, 1986 (51 FR 5035). Prospective petitioners and requestors are reminded that submissions that do not provide all information required by § 2007.1 will not be accepted for review except upon a showing in the submission that the petitioner or requestor made a good faith effort to obtain the information required. This requirement will be strictly enforced. Petitions with respect to competitive need waivers must meet the informational requirements for product addition requests in § 2007.1(c). A model petition format is available from the GSP Information Center and is included in the publication "A Guide to the U.S. Generalized System of Preferences." Prospective petitioners are encouraged to use this model petition format so as to ensure that all informational requirements are met. Questions about the preparation of petitions and requests should be directed to the staff of the GSP Information Center. The phone number of the center is (202) 395–6971.

Notice of petitions and requests accepted for review will be published in the **Federal Register** on or about Wednesday, July 15, 1987. The notice will also provide information concerning the opportunity for interested parties to comment on requests accepted for review through public hearings and written submissions. Any modifications to the GSP resulting from the 1987 GSP annual review will be announced on or about April 1, 1988 and will take effect on July 1, 1988.

**Donald M. Phillips,**

*Chairman, Trade Policy Staff Committee.*

[FR Doc. 87–7536 Filed 4–3–87; 8:45 am]

BILLING CODE 3190-01-M

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## U.S.-Japan Semiconductor Arrangement; Correction of Notice of Request for Public Comments and Notice of Change of Location for Hearing

**SUMMARY:** This notice corrects four errors in the list of products on which the Administration is considering imposing increased customs duties. This notice also announces a change in the location of the public hearing, which will be held on April 13, 1987.

**FOR FURTHER INFORMATION CONTACT:** Jim Gradoville, (202) 395–3475 (for technical and policy issues); Chris Parlin (202) 395–3432 (for legal issues).

**SUPPLEMENTARY INFORMATION:**

**1. Correction to Product List**

On March 31, 1987, we published in the **Federal Register** a notice of "U.S.-Japan Semiconductor Arrangement: Request for Public Comments on Possible U.S. Actions in Response to Acts by the Government of Japan Apparently Inconsistent with the Arrangement (52 FR 10275). The Annex to that notice listed the products on which the Administration was considering imposing increased customs duties, to a level of 100 percent *ad valorem*, in response to the apparent failure by the Government of Japan to fulfill its obligations under the U.S.-Japan Semiconductor Arrangement. We have discovered four errors in that Annex. They are corrected in the Annex to this notice. In all other respects the Annex to the March 31 notice remains unchanged.

**2. Change in location of Public Hearing**

The location of public hearing in the matter has been changed. It will be held in the Auditorium, U.S. Department of Commerce, 14th Street between Pennsylvania and Constitution Avenues, NW., Washington, DC 20230. There are no other changes to the information in and the requirements set out in the March 31 **Federal Register** notice.

Dated: April 2, 1987.

**Alan F. Holmer,**

*General Counsel.*

**Annex**

The Annex to the March 31 **Federal Register** is modified as follows:

(1) Item 660.97 is modified by deleting the article description thereto "Other" and inserting in lieu thereof "Other (except motor-vehicle pumps)";

(2) The provisions for "Data-processing machines with display units" preceding item 676.3055 are modified to read as follows:

"Office machines not specially provided for: Data-processing machines:
Display units: [With color CRT]
676.3041 With monochrome CRT
676.3046 Other";

(3) The superior heading to item 678.5066 is modified by deleting "[Radio-phonograph-tape player combinations]" and inserting in lieu thereof at the same level of indentation "Radio-phonograph-tape player combinations:";

(4) The superior heading to 723.15 pt. is modified by deleting "Photographic film, sensitized by not exposed:" and inserting in lieu thereof "Photographic film, sensitized but not exposed:";

(5) The provisions for "magnetic recording media not having any material recorded thereon" following item 723.15 pt. are modified to read as follows:

Magnetic recording media not having any material recorded thereon: [For audio recording; for video or video and audio recording]
Other:
724.4565 Tape suitable for use with computers
724.4570 Other".

[FR Doc. 87–7693 Filed 4–3–87; 11:27 am]

BILLING CODE 3190-01-M

## POSTAL RATE COMMISSION

**[Docket No. MC87-3; Order No. 751]**

### Filing of Proposal To Extend Collect-On-Delivery Service To Express Mail and Order Designating Officer of the Commission and Fixing Procedural Dates

Issued April 1, 1987.

Before Commissioners: Janet D. Steiger, Chairman; Bonnie Guiton, Vice Chairman; John W. Crutcher; Henry R. Folsom; Patti Birge Tyson; Extension of Collect on Delivery Services, 1987.

Notice is hereby given that on March 30, 1987, the United States Postal Service, pursuant to section 3623 of Title 39, United States Code, filed a request with the Postal Rate Commission for a Recommended Decision on proposed changes to the Domestic Mail Classification Schedule to extend collect-on-delivery service (COD) to Express Mail. §§ 500.090 and 6.020, 39 CFR 500.090 and 6.020, Appendix A.[1] This filing has been designated Docket No. MC87-3.

The proposal was accompanied by the filing of the Direct Testimony of Edmund J. Wronski in support of the proposal.

**Motion for waiver of Rules 64(b)(3), 6 (c) and 64(h)**

Simultaneously with the filing of the case, the Postal Service filed a Motion for Waiver of §§ 64(b)(3), 64(c) and 64(h) of the Commission's rules of practice. [39 CFR 3001.64(b)(3), (c) and (h)]. Section 64(b)(3) requires the Postal Service to file a statement "identifying the degree of substitutability between the various classes and subclasses" including a description of cross-elasticity of demand between various classes of mail. Section 64(c) requires the Postal Service to provide information concerning the characteristics of mailers and the items they mail by class and subclass. Section 64(h) provides that certain rate case requirements listed in section 54 also apply to classification cases that have rate, fee, or cost change implications.

The Postal Service says that it should be granted a waiver because the proposed changes will have an extremely limited impact on volumes and revenues for both COD service and Express Mail service. Because the proposed change would not change rates for any class or subclass of mail but merely extends COD service to Express Mail, the Service states that the economic substitutability of the different classes of mail is not relevant to the proposed change. Furthermore, according to the Service, waiver of rule 64(b)(3) (c) and (h) is justified because of the "extremely small impact on Express Mail and COD service" anticipated to result from this proposal.

Persons who wish to address the Postal Service's motion should file their answers on or before April 20, 1987.

The request of the Postal Service for a recommended decision on establishing changes to the Domestic Classification Schedule and the motion or waiver of certain filing provisions of the Commission's rules of practice and procedure are on file with the Commission and are available for public inspection during regular business hours.

**Intervention**

Any person desiring to be heard with reference to the proposal submitted by the Postal Service in Docket No. MC87-3 and to become a party to the proceeding, or to participate as a party in any hearing thereon, should file a notice of intervention. Notices of intervention must be filed with the Secretary, Postal Rate Commission, Washington, DC 20268-0001 on or before April 20, 1987, and must be in accordance with section 20 of the Commission's rules of practice (39 CFR 3001.20). We direct specific attention to section 20(b) which provides that petitions for leave to intervene shall affirmatively state whether or not the petitioner requests a hearing, or, in lieu thereof, a conference; and further, whether or not the petitioner intends to participate actively in the hearing.[2] Alternatively, persons seeking limited participation, but who do not wish to become parties may, on or before April 20, 1987, file a written notice of limited participation, pursuant to § 3001.20a. In addition, persons wishing to express their views informally, and not desiring to become a party or limited participant, may file comments pursuant to section 20b of the Commission's rules, 39 CFR 3001.20b.

**Officer of the Commission**

The Officer of the Commission charged with representing the interests of the general public in this docket [39 U.S.C. 3624(a)] is Stephen A. Gold, Director, Office of the Consumer Advocate. During this proceeding, he will direct the activities of the Commission personnel assigned to assist him and neither he nor such personnel will participate in nor advise as to any Commission decision [39 CFR 3001.8]. The Officer of the Commission shall supply for the report, at the appropriate time, the name of all Commission personnel assigned to assist him in this case.

In this case the Officer of the Commission shall be separately served with three copies of all filings, in addition to and simultaneously with service on the Commission of the 25 copies required by § 10(c) of the rules of practice [39 CFR 3001.10(c)].

**The Commission orders**

(A) Notices of intervention as a full or limited participator in this docket shall be sent to Charles L. Clapp, Secretary, Postal Rate Commission, 1333 H Street, NW, Suite 300, Washington, DC 20268-0001, on or before April 20, 1987.

(B) Responses to the Postal Service's motion for waiver of sections 64(b)(30), 64(c) and 64(h) of the rules of practice shall be due on or before April 20, 1987.

(C) Stephen A. Gold is designated Officer of the Commission to represent the interests of the general public in this proceeding. Service of documents on the Commission shall not constitute service on the Officer of the Commission, who shall separately be served three copies of all documents.

(D) The Secretary shall cause this Notice and Order to be published in the Federal Register.

By the Commission.

Charles L. Clapp,

*Secretary.*

[FR Doc. 87-7541 Filed 4-3-87; 8:45 am]

BILLING CODE 7715-01-M

[1] The specific changes to the Domestic Mail Classification Schedule are set out in legislative format in Attachment A of the Postal Service's Request.

[2] In this regard, parties who intend to participate actively in this proceeding are encouraged to inform the Postal Service informally and promptly of desired preliminary clarifications of the Postal Service's presentation wherever the participant believes such clarification will expedite this proceeding.

## DEPARTMENT OF STATE

**[Public Notice 1009]**

### Fishermen's Protective Act Procedures; Fee

**ACTION:** Notice of change of due date for second installment of fees for the agreement year from October 1, 1986, through September 30, 1987.

**SUMMARY:** Section 7 of the Fishermen's Protective Act of 1967, as amended, requires fees from participating vessel owners for deposit into the Fishermen's Guaranty Fund. These fees fund a program which compensates fishing vessel owners for certain losses they have incurred when vessels have been seized by foreign nations. 52 FR 2642

established the fee for the present agreement year (October 1, 1986, through September 30, 1987) at $22 per gross vessel ton, optionally payable in two equal installments, the first due no later than January 30, 1987, and the second due no later than March 15, 1987. This notice changes the date on which the second payment is due to May 1, 1987.

**EFFECTIVE DATE:** April 6, 1987.

**FOR FURTHER INFORMATION CONTACT:** Mr. Stetson Tinkham, Office of Fisheries Affairs, Bureau of Oceans and International Environmental and Scientific Affairs, Department of State, Washington, DC 20520, telephone number (202) 647–2009.

**SUPPLEMENTARY INFORMATION:** The Fishermen's Guaranty Fund, under section 7 of the Fishermen's Protective Act (22 U.S.C. 1971 through 1980), (the "Act"), compensates U.S. fishing vessel owners, who have entered into guaranty agreements, for certain losses caused by a foreign country's seizure or detention of a U.S. fishing vessel based on claims to jurisdiction not recognized by the United States or exercised in a manner inconsistent with international law as recognized by the United States. Pre-existing agreements are required. A fee of $22 per gross vessel ton was established for the present agreement year (October 1, 1986, through September 30, 1987) and appeared at 52 FR 2642. Moving the due date for the second installment of fee payments for the 1987 fiscal year from March 15 to May 1, 1987, will reduce financial burden on fishermen who also have substantial insurance premiums due on March 15. All affected individuals were notified by telephone of this change in due date prior to March 15.

### Classification

This action is taken under the authority of 22 U.S.C. 1977, complies with Executive Order 12291, and is not subject to the requirements of the Regulatory Flexibility Act. It does not contain any collection of information requirement, as defined in the Paperwork Reduction Act.

As a "matter relating to Agency . . . contracts," this rule is exempt from the notice, comment, and delayed effectiveness provisions of the Administrative Procedure Act. This means analysis under the Regulatory Flexibility Act if not required.

Dated: March 31, 1987.

For the Secretary of State.

**Richard J. Smith,**

*Acting Assistant Secretary for Oceans and International Environmental and Scientific Affairs.*

[FR Doc. 87–7550 Filed 4–3–87; 8:45 am]

BILLING CODE 4710–09–M

## DEPARTMENT OF TRANSPORTATION

### Aviation Proceedings; Agreements filed During the Week Ending—March 27, 1987

The following agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 408, 409, 412, and 414. Answers may be filed within 21 days of date of filing.

**Docket No. 44750**

Parties: Members of International Air Transport Association
*Date Filed:* March 24, 1987
*Subject:* Canada-Tunisia GIT fares
*Proposed Effective Date:* May 15, 1987

**Docket No. 44751 R–1—R–3**

Parties: Members of International Air Transport Association
*Date Filed:* March 24, 1987
*Subject:* 015 Series Filing Procedures
*Proposed Effective Date:* April 1, 1987

**Docket No. 44754 R–1—R–17**

Parties: Members of International Air Transport Association
*Date Filed:* March 26, 1987
*Subject:* TC12 North Atlantic-Africa Resolutions
*Proposed Effective Date:* April 1, 1987

**Docket No. 44755 R–1—R–2**

Parties: Members of International Air Transport Association
*Date Filed:* March 26, 1987
*Subject:* Composite Baggage Resolutions 300 and 398
*Proposed Effective Date:* April 1, 1987

**Docket No. 44756 R–1—R–18**

Parties: Members of International Air Transport Association
*Date Filed:* March 26, 1987
*Subject:* TC12 South Atlantic-Europe Resolutions
*Proposed Effective Date:* April 1, 1987

**Docket No. 44757**

Parties: Members of International Air Transport Association
*Date Filed:* March 26, 1987
*Subject:* TC1 Computer Constructed Fares to/from USA
*Proposed Effective Date:* May 1, 1987

**Phyllis T. Kaylor,**

*Chief, Documentary Services Division.*

[FR Doc. 87–7537 Filed 4–3–87; 8:45 am]

BILLING CODE 4910–62–M

## Coast Guard

**[CGD14–87–01]**

### Vessel Certificates and Exemptions Under the International Regulations for Preventing Collisions at Seas (72 COLREGS)

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of granting of Certificates of Alternative Compliance to vessels.

**SUMMARY:** This notice lists commercial vessels granted Certificates of Alternative Compliance. This notice lists vessels which, due to their special construction and purpose, cannot comply fully with certain provisions of the International Regulations for Preventing Collisions at Sea (72 COLREGS) without interfering with the vessels' special functions. The intent of this notice is to allow the mariner to be aware of the listing of these commercial vessels that have granted Certificates of Alternative Compliance.

**EFFECTIVE DATE:** February 19, 1987.

**FOR FURTHER INFORMATION CONTACT:** CDR Gerald W. Abrams, Chief, Commercial Vessel Safety Branch, U.S. Coast Guard, Commander (mvs), Fourteenth Coast Guard District, PJKK Federal Bldg., 300 Ala Moana Blvd., Room 9141, Honolulu, Hawaii 96450. Telephone (808) 541–2114.

**SUPPLEMENTARY INFORMATION:** Under the provisions of subsection 1605(c) of Title 33 United States Code, the Coast Guard publishes, in the **Federal Register**, a listing of vessels granted Certificates of Alternative Compliance. Certificates of Alternative Compliance are based on a determination that a vessel cannot comply fully with International Rules of light(s), shape(s), and sound signal provisions without interference with the vessel's special function. The listing consists of commercial vessels granted certificates after authority of issuance was transferred to the Chief of the Marine Safety Division of the Coast Guard Districts on April 1, 1982 (33 CFR Part 81). The alternative allowed results in the closest possible compliance with Annex I of the 72 COLREGS. The following commercial vessels are not in compliance with the 72 COLREGS and have been issued Certificates of Alternative Compliance.

**Vessel and Official Number**

The following vessels' after masthead lights separation from the forward masthead lights is less than one half the length of the vessels (Annex I (3)(a)). The length overall of the vessels is 122.37 meters and the horizontal separation between the lights is 43.20 meters.

Ocean Valiant.....Hyundai Hull No. 520
Ocean America.....Hyundai Hull No. 521

Dated: February 19, 1987.

**T. Wood,**

*Captain, U.S. Coast Guard, Chief, Marine Safety Division, Fourteenth Coast Guard District.*

[FR Doc. 87-7562 Filed 4-3-87; 8:45 am]

BILLING CODE 4910-14-M

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[CGD14-87-02]

## Vessel Certificates and Exemptions Under the International Regulations for Preventing Collisions at Seas (72 COLREGS)

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of granting of Certificates of Alternative Compliance to vessels.

**SUMMARY:** This notice lists commercial vessels granted Certificates of Alternative Compliance between August 11, 1986 and January 6, 1987. This notice lists vessels which, due to their special construction and purpose, cannot comply fully with certain provisions of the International Regulations for Preventing Collisions at Sea (72 COLREGS) without interfering with the vessels' special functions. The intent of this notice is to allow the mariner to be aware of the listing of these commercial vessels that have granted Certificates of Alternative Compliance.

**EFFECTIVE DATE:** February 6, 1987.

**FOR FURTHER INFORMATION CONTACT:** CDR Gerald W. Abrams, Chief, Commercial Vessel Safety Branch, U.S. Coast Guard, Commander (mvs), Fourteenth Coast Guard District, PJKK Federal Bldg., 300 Ala Moana Blvd., Room 9141, Honolulu, Hawaii, 96850. Telephone (808) 541-2114.

**SUPPLEMENTARY INFORMATION:** Under the provisions of subsection 1605(c) of Title 33 United States Code, the Coast Guard publishes, in the **Federal Register**, a listing of vessels granted Certificates of Alternative Compliance. Certificates of Alternative Compliance are based on a determination that a vessel cannot comply fully with International Rules of light(s), shape(s), and sound signal provisions without interference with the vessel's special function. The listing consists of commercial vessels granted certificates after authority of issuance was transferred to the Chief of the Marine Safety Division of the Coast Guard Districts on April 1, 1982 (33 CFR Part 81). The alternative allowed results in the closest possible compliance with Annex I of the 72 COLREGS. The following commercial vessels are not in compliance with the 72 COLREGS and have been issued Certificates of Alternative Compliance. Vessel and Official Number

The following vessels' after masthead lights separation from the forward masthead lights is less than one half the length of the vessels (Annex I(3)(a)). The length overall of the vessels is 102 meters and the horizontal separation between the lights is 22 meters.

Sonat Pratt Rather.....Daewoo Hull No. 3010
Sonat George Richardson...Daewoo Hull No. 3011

The following vessel has been issued a Certificate of Alternative Compliance which allows for an exception to the following: Annex I(2)(a)(i) in that the forward masthead light is located 6 meters above the upper main deck; Annex I(2)(f)(1) in that the forward and after masthead lights are located 6 meters and 35 meters respectively above the upper main deck; Annex I(2)(g) in that the side lights are located 0.5 meters below the upper main deck; Annex I(3)(a) in that the horizontal distance between the forward and after masthead lights is 28.4 meters; and Annex I(9)(b) in that the all-round lights are obscured by a derrick within the after angular sector of 145 degrees, and a duplicate set of all-round lights, placed on the after side of derrick, are obscured by the derrick within the forward angular sector of 145 degrees.

Zane Barnes.....ON 906283

The following vessels' side lights are located in a horizontal plane 2.0 feet forward of the masthead lights (Annex I(3)(b)).

Bull Run.....ON 579741
Harpers Ferry.....ON 577652
Leesburg.....ON 588427

The following vessel side lights are located in a horizontal plane 0.25 feet forward of the masthead light (Annex I(3)(b)).

George Pickett.....ON 648155

Dated: February 5, 1987.

**T. Wood,**

*Captain, U.S. Coast Guard, Chief, Marine Safety Division, Fourteenth Coast Guard District.*

[FR Doc. 87-7563 Filed 4-3-87; 8:45 am]

BILLING CODE 4910-14-M

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## DEPARTMENT OF THE TREASURY

### Office of the Secretary

**[Supplement to Department Circular—Public Debt Series—No. 7-87]**

### Treasury Notes, Series W-1989

Washington, March 25, 1987.

The Secretary announced on March 24, 1987, that the interest rate on the notes designated Series W-1989, described in Department Circular—Public Debt Series—No. 7-87 dated March 19, 1987, will be 6⅜ percent. Interest on the notes will be payable at the rate of 6⅜ percent per annum.

**Gerald Murphy,**

*Fiscal Assistant Secretary.*

[FR Doc. 87-7470 Filed 4-3-87; 8:45 am]

BILLING CODE 4810-40-M

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**[Supplement to Department Circular—Public Debt Series—No. 8-87]**

### Treasury Notes, Series M-1991

Washington, March 26, 1987.

The Secretary announced on March 25, 1987, that the interest rate on the notes designated Series M-1991, described in Department Circular—Public Debt Series—No. 8-87 dated March 19, 1987, will be 6¾ percent. Interest on the notes will be payable at the rate of 6¾ percent per annum.

**Gerald Murphy,**

*Fiscal Assistant Secretary.*

[FR Doc. 87-7471 Filed 4-3-87; 8:45 am]

BILLING CODE 4810-40-M

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**[Supplement to Department Circular—Public Debt Series—No. 9-87]**

### Treasury Notes, Series E-1994

Washington, March 27, 1987.

The Secretary announced on March 26, 1987, that the interest rate on the notes designated Series E-1994, described in Department Circular—Public Debt Series—No. 9-87 dated March 19, 1987, will be 7 percent. Interest on the notes will be payable at the rate of 7 percent per annum.

**Gerald Murphy,**

*Fiscal Assistant Secretary.*

[FR Doc. 87-7472 Filed 4-3-87; 8:45 am]

BILLING CODE 4810-40-M

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### Debt Management Advisory Committee Meeting

Notice is hereby given, pursuant to section 10 of Pub. L. 92-463, that a

meeting will be held at the U.S. Treasury Department in Washington, DC on April 28 and April 29, 1987 of the following debt management advisory committee:

Public Securities Association
U.S. Government and Federal Agencies, Securities Committee

The agenda for the Public Securities Association U.S. Government and Federal Agencies Securities Committee meeting provides for a working session on April 28 and the preparation of a written report to the Secretary of the Treasury on April 29, 1987.

Pursuant to the authority placed in Heads of Departments by section 10(d) of Pub. L. 92–463, and vested in me by Treasury Department Order 101–5, I hereby determine that this meeting is concerned with information exempt from disclosure under section 552b(c)(4) and (9)(A) of Title 5 of the United States Code, and that the public interest requires that such meetings be closed to the public.

My reasons for this determination are as follows. The Treasury Department requires frank and full advice from representatives of the financial community prior to making its final decision on major financing operations. Historically, this advice has been offered by debt management advisory committees established by the several major segments of the financial community, which committees have been utilized by the Department at meetings called by representatives of the Secretary. When so utilized, such a committee is recognized to be an advisory committee under Pub. L. 92–463. The advice provided consists of commercial and financial information given and received in confidence. As such debt management advisory committee activities concern matters which fall within the exemption covered by section 552b(c)(4) of Title 5 of the United States Code for matters which are "trade secrets and commercial or financial information obtained from a person and privileged or confidential."

Although the Treasury's final announcement of financing plans may not reflect the recommendations provided in reports of an advisory committee, premature disclosure of these reports would lead to significant financial speculation in the securities market. Thus, these meetings also fall within the exemption covered by section 552b(c)(9)(A) of Title 5 of the United States Code.

The Assistant Secretary (Domestic Finance) shall be responsible for maintaining records of debt management advisory committee meetings and for providing annual reports setting forth a summary of committee activities and such other matters as may be informative to the public consistent with the policy of section 552b of Title 5 of the United States Code.

Dated: March 31, 1987.

**Charles O. Sethness,**

*Assistant Secretary (Domestic Finance).*

[FR Doc. 87–7572 Filed 4–3–87; 8:45 am]

BILLING CODE 4810-25-M

## Internal Revenue Service

### Art Advisory Panel of the Commissioner of Internal Revenue; Availability of Report of Closed Meetings

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Notice of availability of report on closed meetings of the Art Advisory Penal.

**SUMMARY:** The Report is now available.

Pursuant to 5 U.S.C. app. I section 10(d), of the Federal Advisory Committee Act; and 5 U.S.C. 552b, the Government in the Sunshine Act; and Treasury Directive 10–06.E section 12b (9–2–77); A report summarizing the closed meeting activities of the Art Advisory Penal during 1986, has been prepared. A copy of this report has been filed with the Assistant Secretary of the Treasury for Management and is now available for public inspection at: Internal Revenue Service, Freedom of Information Reading Room, Room 1565, 1111 Constitution Avenue, NW., Washington, DC 20224.

Requests for copies, at $1.95 each, should be addressed to: Director, Disclosure Operations Division, Attn: FOI Reading Room, Box 388, Benjamin Franklin Station, Washington, DC 20044, Telephone (202) 566–3770, (Not a toll free telephone number).

This document does not meet the criteria for significant regulations set forth in paragraph 8 of the Treasury Directive appearing in the **Federal Register** for Wednesday, November 8, 1978 (43 FR 52122).

**FOR FURTHER INFORMATION CONTACT:** Karen Carolan, CC:AP:V:4, 1111 Constitution Avenue, NW., Room 2575, Washington, DC 20224, Telephone (202) 566–9259 (Not a toll free telephone number).

**Lawrence B. Gibbs,**

*Commissioner.*

[FR Doc. 87–7532 Filed 4–3–87; 8:45 am]

BILLING CODE 4830-01-M

## VETERANS ADMINISTRATION

### Privacy Act of 1974; Report of New Matching Program

**AGENCY:** Veterans Administration.

**ACTION:** Notice of matching program—Veterans Administration accounts receivable records/State income records.

**SUMMARY:** The Veterans Administration is providing notice that the Office of Inspector General will match records of delinquent accounts of veterans and beneficiaries with the records of State agencies that contain income information. The goal of the matching program is to assess the ability of the veterans and beneficiaries to repay their indebtedness to the United States.

**DATE:** It is anticipated the matching will commence in approximately March 1987.

**ADDRESS:** Interested individuals may comment on the proposed matches by writing to the Assistant Inspector General for Policy, Planning and Resources (53), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420.

**FOR FURTHER INFORMATION CONTACT:** Mr. Jack H. Kroll, Assistant Inspector General for Policy, Planning and Resources (53), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420, telephone number 202–233–5297.

**SUPPLEMENTARY INFORMATION:** Further information regarding the matching program is provided below. This information is required by paragraph 5.f.(1) of the Revised Supplemental Guidance for Conducting Matching Programs, issued by the Office of Management and Budget (47 FR 21656, May 19, 1982). A copy of this notice has been provided to both Houses of Congress and the Office of Management and Budget.

Approved: March 18, 1987.

**Thomas K. Turnage,**

*Administrator.*

**Report of Matching Program: Veterans Administration Accounts Receivable Records/State Income Records**

a. *Authority:* (1) The Inspector General Act of 1978 (Pub. L. 95–452).

(2) Title 38, United States Code, Veterans Benefits.

(3) The Federal Claims Collection Act of 1966 (31 U.S.C. 3711), as amended by the Debt Collection Act of 1982 (Pub. L. 97–365).

b. *Program Description:* (1) *Purpose:* There are a sizeable number of veterans,

dependents and survivors of veterans who have incurred indebtedness to the Veterans Administration (VA) as a result of participation in various benefits programs. Under Titles 31 and 38, United States Code, the VA is required to attempt recovery of amounts owed the Government as a result of overpayments in programs such as compensation, pension, educational or housing loans, and in cases of court ordered restitution for benefits obtained by ineligible persons. In compliance with the Debt Collection Act, the VA has increased its efforts to recover money owed by veterans and beneficiaries. Initial collection attempts have already been made by notifying the individuals concerned of their indebtedness and establishing accounts receivable to document repayment.

(2) The Office of Inspector General (OIG) will assist in these efforts by initiating a program of matching lists of persons owing the VA with lists derived from State income records to determine the ability of these persons to repay or reduce their obligations to the Agency. The State records to be used in the match may consist of wage, tax, employment security, and benefit payment records, or other income-related files. The matches will be performed by the VA OIG whenever possible; however, in some instances State agencies may actually perform the match in order to comply with local laws or rules on the release of records.

In conducting the matches, the OIG will request that State agencies provide computerized excerpts of records containing names, identifying data, and summaries or descriptions of the records. When it is necessary that a State agency perform the match, the OIG will provide a computerized extract of VA records containing only the social security numbers of veterans and beneficiaries. When it is necessary to verify the identity of veterans or beneficiaries who may be listed in the files of State agencies, the OIG may furnish additional identifying data such as date of birth, place of birth, sex, etc. In accordance with Title 38 U.S.C. 3301, the names and addresses of veterans and beneficiaries will not be made available to State agencies in the course of, or as a result of this match, except in connection with a proceeding for the collection of a debt owed to the United States and resulting from the receipt of VA benefits.

It is planned that the first matches will be with records of the following State agencies:

Pennsylvania Office of Employment Security
Tennessee Department of Employment Security
Virginia Employment Commission

If these matches demonstrate the effectiveness of matching VA accounts receivable records with State income records, the Inspector General may direct that matches be made with the records of additional States. The schedule and order of subsequent matches will depend on current workload, available resources, and other factors and, therefore, cannot be projected. The matches may be repeated on a cyclical or intermittent basis.

In the event of a "hit", i.e., the determination through the matching program that a debtor appears in State files, the identity of the debtor will be verified by the OIG. If confirmed, any income or employment information concerning that person will be referred to the Department of Veterans Benefits for further review and followup action. Employers or other knowledgeable sources may be contacted in the verification process. The VA may take steps to collect on the indebtedness when the circumstances warrant and after there have been unsuccessful efforts to obtain repayment agreements with debtors. Civil action to recover on the indebtedness may also be undertaken. When there are reasonable grounds to believe there has been a violation of criminal law, the matter may be investigated and referred for prosecutive consideration.

c. *Records to be Matched:* Automated lists extracted from the following systems of records will be matched with State income records:

(1) Compensation, Pension, Education, and Rehabilitation Records-VA (58VA21/22/28) as set forth on page 789 of the **Federal Register** publication Privacy Act Issuances, 1985 Compilation, Vol. V and amended at 50 FR 26875 (June 28, 1985); 50 FR 31453 (August 2, 1985), 51 FR 24781 (July 8, 1986); 51 FR 25142 (July 10, 1986); and 51 FR 28289 (August 6, 1986).

(2) Loan Guaranty Home, Condominium, and Manufactured Home Loan Applicant Records, Specially Adapted Housing Applicant Records and Vendee Loan Applicant Records-VA (55VA26), as set forth in Privacy Act Issuances, 1985 compilation, Volume V, pages 785–787 and amended at 51 FR 24781 (July 8, 1986).

The disclosure of information from these systems of records, for the purpose of the matching program, is permitted by published routine uses.

d. *Period of Match:* Intermittently from approximately March 1987.

e. *Safeguards:* Records used in the matches and data generated, as a result, will be safeguarded from unauthorized disclosure. Access will be limited to those persons who have need for the information in order to conduct the matches or followup actions. All of the material will be stored in locked containers when not in use. Prior to releasing any information from the VA systems of records to a State agency, the OIG will obtain a written agreement from the agency specifying that the matching file will remain the property of the VA and will be returned to the OIG or will be destroyed upon completion of the match, as appropriate; that it will be used and accessed only to match the files previously agreed to; that it will not be used to extract information concerning "non-hit" individuals for any purpose; and that it will not be duplicated or disseminated within or outside the matching agency unless authorized in writing by the VA OIG or by the Chief Benefits Director.

f. *Retention and Disposition:* Records not resulting in "hits" will be destroyed by burning, shredding, or electronic erasing within three months of the completion of the individual match. Records resulting in "hits" will be retained by either the OIG or the Department of Veterans Benefits until the completion of any necessary administrative or legal action and will then be disposed of in accordance with approved records control schedules and/or approved disposition authority from the Archivist of the United States.

[FR Doc. 87–7460 Filed 4–3–87; 8:45 am]
BILLING CODE 8320–01–M

## Privacy Act of 1974; Amended System of Records

Notice is hereby given that the Veterans Administration is altering the system of records entitled "Management Personnel Inventory-VA" (18VA05) as set forth on page 759 of the Privacy Act Issuances, 1985 Compilation, Volume V.

This system is being upgraded in order to enhance the VA's ability to recruit and place employees in centralized managerial or executive positions. The purpose of amending this system of records is to serve VA management's need to locate and refer high quality candidates for centralized positions through job-related qualifications and evaluation criteria. The system will expedite the filling of centralized position vacancies which are considered key management positions to the Administrator, Department Heads, Associate Deputy Administrators, and

Staff Office Directors. The system will also: Inform possible candidates of vacancies available in centralized management; monitor the receipt and disposition of applications; facilitate response to inquiries concerning the filling of positions; provide statistical information on candidates, vacancies and positions filled; and provide immediate on-line access to centralized staffing records for authorized personnel.

The system will contain paper files and automated records on each candidate who makes application for the Centralized Staffing System (CSS). The CSS will contain data on employment history, skills, qualifications, education, training, awards, performance evaluations, and geographic mobility. So that the system of records notice accurately reflects the changes being made to the system, certain paragraphs of the notice are being revised. These revised paragraphs are: System Name, System Location, Categories of Records in the System, Policies and Practices for Storing, Retrieving, Accessing, Retaining, and Disposing Records in the System, Retention and Disposal, and System Manager and Address.

The Veterans Administration has determined that the routine uses of records contained in this system, the categories of users and the purposes of such uses remains unchanged.

A "Report of Intention to Publish a **Federal Register** Notice" and an advance copy of the system notice has been provided to the Speaker of the House, President of the Senate, and the Director, Office of Management and Budget (OMB), as required by the provisions of 5 U.S.C. 552a (e)(4) and (o) and the Privacy Act Guidelines issued by OMB on October 3, 1975 (40 FR 45877).

These changes are administrative in nature, therefore, no public comment is required.

Approved: March 17, 1987.

**Thomas K. Turnage,**

*Administrator.*

## Notice of Amendments to System of Records

1. The system identified as "Management Personnel Inventory-VA" (18VA05), on page 789 of the Privacy Act Issuances, 1985 Compilation, Volume V, is being revised as follows:

**18VA05**

**SYSTEM NAME:**

Centralized Staffing System-VA.

**SYSTEM LOCATION:**

Active records are located at the Veterans Administration (VA) Central Office, 810 Vermont Avenue, NW., Washington, DC 20420. Inactive records will be stored at the same address. Information from these records is also maintained in automated files at the VA Central Office. Duplicate copies of certain manual and automated files are maintained only by the VA Central Office. No other VA facility has access to the Centralized Staffing System automated data.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

All categories of records may include names of individuals, social security numbers, dates of birth, inquiries or correspondence sent to the VA by individuals, information pertinent to decisions or responses given by the Administrator, Department Heads, Associate Deputy Administrators, and Staff Office Directors, and copies of the decisions or responses of the Administrator, Department Heads, Associate Deputy Administrators, and Staff Office Directors. The records will also include:

(a) Records reflecting work experience, educational level, and specialized training obtained outside of the Federal service.

(b) Records reflecting Federal service and documenting work experience and specialized education or training received while employed. Such records contain information about: Past and present positions held including grades, salaries, and duty station locations.

(c) Records pertaining to annual performance evaluation and supervisory assessment of performance in response to specific knowledge, skills, abilities and other characteristics.

(d) Records relating to incentive awards received while employed within or outside of the agency.

(e) Records reflecting ratings assigned by a promotion panel to individuals participating in the system.

(f) Records reflecting geographic mobility and mobility statements.

(g) Records reflecting qualification determinations made on individuals participating in the system.

* * * * *

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING RECORDS IN THE SYSTEM:**

**STORAGE:**

Paper documents, magnetic tape and disks.

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**SAFEGUARDS:**

1. *Physical Security*. The VA Central Office is protected from outside access by the Federal Protective Service. All file areas are restricted to authorized personnel on a need-to-know basis. Hard copy records pertaining to employees, or other sensitive records are stored in locked cabinets. Access to the VA Central Office computer room is restricted to authorized operating personnel through electronic locking devices. All other persons gaining access to the computer room are escorted by an individual with authorized access.

2. *System Security:* Access to computer programs is controlled at three levels: Programming, auditing, and operations. The CSS provides automated recognition of authorized users and their respective access restrictions through passwords. Passwords are changed periodically and are restricted to authorized individuals on a need-to-know basis for system access or security purposes. In addition to passwords, there are other levels of security assigned to system personnel only.

These levels are strictly monitored by the Systems Manager. The VA Central Office Systems Security Officer is assigned responsibility for privacy-security measures, including review of violation logs and local control and distribution of passwords.

**RETENTION AND DISPOSAL:**

Folder files are destroyed immediately upon separation from VA. Folders are retained two years if employee withdraws from the system and subsequently destroyed. Automated records are stored on disks for a period of ten years. Automated records in excess of ten years are then stored on remote disks separate from active disks. Other records are retained and disposed of in accordance with disposition authorization approved by the Archivist of the United States.

**SYSTEM MANAGER(S) AND ADDRESS:**

Director, Office of Personnel and Labor Relations, (054), VA Central Office, Washington, DC 20420.

**NOTIFICATION PROCEDURE:**

Any individual who wishes to determine whether a record is being maintained in this system under his or her name, or who has a routine inquiry concerning the status of his or her application under this system may contact the Director, Recruitment and Placement Service, Office of Personnel and Labor Relations, VA Central Office,

Washington, DC 20420. Requests concerning the specific content of a record must be in writing or in person. Employee should provide full name, social security number, employing station and position title.

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[FR Doc. 87-7461 Filed 4-3-87; 8:45 am]

BILLING CODE 8320-01-M

## Agency Form Under OMB Review

**AGENCY:** Veterans Administration.

**ACTION:** Notice.

The Veterans Administration has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document contains an extension and lists the following information: (1) The department or staff office issuing the form, (2) the title of the form, (3) the agency form number, if applicable, (4) a description of the need and its use, (5) how often the form must be filled out, (6) who will be required or asked to report, (7) an estimate of the number of responses, (8) an estimate of the total number of hours needed to fill out the form, and (9) an indication of whether section 3504(h) of Pub. L. 96-511 applies.

**ADDRESSES:** Copies of the forms and supporting documents may be obtained from Patti Viers, Agency Clearance Officer (732), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233-2146. Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Allison Herron, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503, (202) 395-7316.

**DATES:** Comments on the information collection should be directed to the OMB Desk Officer on or before June 5, 1987.

Dated: March 30, 1987.

By direction of the Administrator.

**David A. Cox,**

*Associate Deputy Administrator for Management.*

**Extension**

1. Department of Veterans Benefits.
2. Request to Lender for Status Loan Account—LCS.
3. VA Form 26-8778.
4. Status request to servicers of guaranteed or insured loans and vendee loans sold with VA repurchase agreement on loans previously reported in default. Data is essential to VA contracts with obligors.
5. On occasion.
6. Small businesses or organizations.
7. 175,000 responses.
8. 29,167 hours.
9. Not applicable.

**Extension**

1. Department of Veterans Benefits.
2. Request for Postponement of Offsite or Exterior Onsite Improvements—Home Loan.
3. VA Form 26-1847.
4. Veteran's and lender's request for guaranty of home loan, for which offsite or exterior onsite improvements are incomplete, to permit guaranty of loan and veteran's occupancy of property. VA uses this information to determine proper disbursement of escrow funds or acceptance of other assurances.
5. On occasion.
6. Individuals or households; Businesses or other for-profit; and Small businesses or organizations.
7. 5,000 responses.
8. 2,500 hours.
9. Not applicable.

[FR Doc. 87-7459 Filed 4-3-87; 8:45 am]

BILLING CODE 8320-01-M

# Sunshine Act Meetings

Federal Register
Vol. 52, No. 65
Monday, April 6, 1987

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

**EQUAL EMPLOYMENT OPPORTUNITY COMMISSION**

**"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT:** Volume 52, Friday, April 3, 1987.

**PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING:** 2:00 p.m. (eastern time) Monday, April 13, 1987.

**CHANGE IN THE MEETING:**

Open

1. Announcement of Notation Votes
2. A Report on Commission Operations (Optional)
3. Request for Commission Approval to Receive Proposals to Mail out and Process the 1987 Employer Information Report EEO-1 Survey

**CONTACT PERSON FOR MORE INFORMATION:** Cynthia C. Matthews, Executive Officer, Executive Secretariat, (202) 634-6748.

This Notice, Issued and Dated April 2, 1987.

**Cynthia C. Matthews,**

*Executive Officer, Executive Secretariat.*

[FR Doc. 87-7654 Filed 4-2-87; 2:58 pm]

BILLING CODE 6750-06-M

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**MISSISSIPPI RIVER COMMISSION**

**TIME AND DATE:** 9:00 a.m., April 27, 1987.

**PLACE:** On board MV MISSISSIPPI at foot of Eighth Street, Cairo, IL.

**STATUS:** Open to the public.

**MATTERS TO BE CONSIDERED:** (1) Report by president on general conditions of the Mississippi River and Tributaries Project and major accomplishments since the last meeting; (2) views and suggestions from members of the public on any matters pertaining to the Flood Control, Mississippi River and Tributaries Project; and (3) District Commander's report on the Mississippi River and Tributaries Project in Memphis District.

**CONTACT PERSON FOR MORE INFORMATION:** Mr. Rodger D. Harris, telephone 601-634-5766.

**Rodger D. Harris,**

*Executive Assistant, Mississippi River Commission.*

[FR Doc. 87-7593 Filed 4-2-87; 10:32 am]

BILLING CODE 3710-GX-M

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**MISSISSIPPI RIVER COMMISSION**

**TIME AND DATE:** 9:00 a.m., April 28, 1987.

**PLACE:** On board MV MISSISSIPPI at City Front, vicinity of Beale Street, Memphis, TN.

**STATUS:** Open to the public.

**MATTERS TO BE CONSIDERED:** (1) Report by president on general conditions of the Mississippi River and Tributaries Project and major accomplishments since the last meeting; (2) views and suggestions from members of the public on any matters pertaining to the Flood Control, Mississippi River and Tributaries Project.

**CONTACT PERSON FOR MORE INFORMATION:** Mr. Rodger D. Harris, telephone 601-634-5766.

**Rodger D. Harris,**

*Executive Assistant, Mississippi River Commission.*

[FR Doc. 87-7594 Filed 4-2-87; 10:32 am]

BILLING CODE 3710-GX-M

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**MISSISSIPPI RIVER COMMISSION**

**TIME AND DATE:** 9:00 a.m., April 29, 1987.

**PLACE:** On board MV MISSISSIPPI at City Front, Greenville, MS.

**STATUS:** Open to the public.

**MATTERS TO BE CONSIDERED:** (1) Report by president on general conditions of the Mississippi River and Tributaries Project and major accomplishments since the last meeting; (2) views and suggestions from members of the public on any matters pertaining to the Flood Control, Mississippi River and Tributaries Project; and (3) District Commander's report on the Mississippi River and Tributaries Project in Vicksburg District.

**CONTACT PERSON FOR MORE INFORMATION:** Mr. Rodger D. Harris, telephone 601-634-5766.

**Rodger D. Harris,**

*Executive Assistant, Mississippi River Commission.*

[FR Doc. 87-7595 Filed 4-2-87; 10:32 am]

BILLING CODE 3710-GX-M

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**MISSISSIPPI RIVER COMMISSION**

**TIME AND DATE:** 9:00 a.m., May 1, 1987.

**PLACE:** On board MV MISSISSIPPI at foot of Prytania Street, New Orleans, LA.

**STATUS:** Open to the public.

**MATTERS TO BE CONSIDERED:** (1) Report by president on general conditions of the Mississippi River and Tributaries Project and major accomplishments since the last meeting; (2) views and suggestions from members of the public on any matters pertaining to the Flood Control, Mississippi River and Tributaries Project; and (3) District Commander's report on the Mississippi River and Tributaries Project in New Orleans District.

**CONTACT PERSON FOR MORE INFORMATION:** Mr. Rodger D. Harris, telephone 601-634-5766.

**Rodger D. Harris,**

*Executive Assistant, Mississippi River Commission.*

[FR Doc. 87-7596 Filed 4-2-87; 10:32 am]

BILLING CODE 3710-GX-M

# Corrections

Federal Register
Vol. 52, No. 65
Monday, April 6, 1987

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## ENVIRONMENTAL PROTECTION AGENCY

**[OPTS-400001A; FRL-3175-1]**

### Statement of Policy and Guidance Regarding Petitions Under Section 313 of Title III of the Superfund Amendments and Reauthorization Act of 1986; Technical Amendments

*Correction*

In notice document 87-6451 appearing on page 9538 in the issue of Wednesday, March 25, 1987, make the following correction:

In the second column of the page, in the list of chemicals, in the 11th entry,"compounds" should read "ethers".

BILLING CODE 1505-01-D

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Labor Surplus Area Classifications Under Executive Orders 12073 and 10582; Annual List of Labor Surplus Areas

*Correction*

In notice document 87-6527 beginning on page 9727 in the issue of Thursday, March 26, 1987, make the following corrections to the table:

1. On page 9727, in the third column, in the first column of the table, "Mobile County" should read "Mobile City".

2. On the same page and column, in the second column of the table, in the entry beginning "Russell County Less Phenix City", delete "in Dallas County".

3. On page 9728, in the left table, in the second column of the table, the second entry was incomplete and should read "Fairbanks North Star Borough less Fairbanks City".

4. On the same page, in the right table, in the first column of the table, under Florida, "Hialeah County" should read "Hialeah City".

5. On page 9729, in the middle table, in the first column of the table, "Maywood Village County" should read "Maywood Village".

6. On the same page, in the right table, in the first column of the table, "Richmond County" should read "Richmond City".

7. On the same page, in the same table, under Iowa:

(a) In the first column of the table, "Burlington County" should read "Burlington City";

(b) In the first column of the table, "Clinton County" should read "Clinton City";

(c) In the first column of the table, "Davenport County" should read "Davenport City"; and

(d) In the second column of the table, in the entry "Wapello County Less Ottumwa City", "Wappello" was misspelled and delete the second "Less Ottumwa".

8. On the same page, also in the right table, in the first column of the table, under Kentucky, "Ashland County" should read "Ashland City".

9. On page 9730, in the right table, in the second column of the table, the entry opposite the first column entry "Lansing City" was incomplete and should read "Lansing City in Eaton County, Ingham County".

10. On page 9731, in the left table, in the first column of the table, under Mississippi, "Biloxi County" should read "Biloxi City".

11. On the same page, in the second column of the same table, the entry opposite the first column entry "Hattiesburg City" was incomplete and should read "Hattiesburg City in Forrest County, Lamar County".

BILLING CODE 1505-01-D

## DEPARTMENT OF THE TREASURY

### Customs Service

### 19 CFR Parts 24 and 146

**[T.D. 87-44]**

### Harbor Maintenance Fee

*Correction*

In rule document 87-7006 beginning on page 10198 in the issue of Monday, March 30, 1987, make the following corrections:

**§ 24.24 [Corrected]**

1. On page 10201, in the second column, in § 24.24(b)(1), in the table, in the entry "2813--Alameda, CA", under the "Notations" heading, "Movement" should read "Movements".

2. On the same page, in the third column, in the table, under the "Notations" heading, in the sixth line, remove "Do".

3. On page 10202, in the third column, in § 24.24(c)(6)(i), in the fourth line, "or commercial" should read "on commercial".

4. On page 10207, in § 24.24(e)(3)(ii), in the second column, in the sixth line, the reference should read "paragraph (e)(3)(iii)".

**§ 146.22 [Corrected]**

5. On page 10211, in the third column, in § 146.22(e), in the sixth line, "subject" was misspelled.

BILLING CODE 1505-01-D

federal register

Monday
April 6, 1987

Part II

# Environmental Protection Agency

40 CFR Parts 141, 142 and 143

National Primary and Secondary Drinking Water Regulations; Proposed Rule

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Parts 141, 142 and 143**

**[WH-FRL-3130-2]**

## National Primary and Secondary Drinking Water Regulations

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to revise the general public notification regulations found at 40 CFR 141.32 of the National Primary Drinking Water Regulations (NPDWR), and to amend the public notification requirements for fluoride found at 40 CFR 143.5 of the National Secondary Drinking Water Regulations to make them consistent with the new general requirements. These changes, which implement the public notification requirements of the June 19, 1986, amendments to the Safe Drinking Water Act (SDWA), 42 U.S.C. 300f *et seq.*, apply to owners and operators of public water systems which fail to comply with certain requirements of the National Primary Drinking Water Regulations (NPDWR), and owners or operators of public water systems which have a variance or exemption. EPA is proposing requirements regarding the content, form, manner, and frequency of the public notice.

EPA is also proposing new public notification requirements regarding lead contamination of drinking water to implement the SDWA Amendments. These notification requirements would apply in addition to the general public notification requirements. This section requires that each community water system identify and provide notice to persons who may be affected by lead contamination in their drinking water where such contamination results from either the use of lead in the construction materials of the distribution system and/or corrosivity of the water supply sufficient to cause leaching of lead. EPA is proposing requirements regarding the content, form, manner, and frequency of this notice as well.

Finally, EPA is proposing to revise the State implementation regulations found in 40 CFR 142.16 to require the State to adopt at a minimum the new public notification requirements in § 141.32 in order to obtain and retain primary enforcement authority for public water systems ("primacy").

EPA is proposing that the general public notice requirements under 40 CFR 141.32 and the public notice requirements pertaining to lead under 40 CFR 141.34 become effective 30 days after promulgation.

**DATES:** Written comments should be submitted by June 5, 1987. A public hearing will be held in Washington, DC, on Friday, May 1 beginning at 9:00 a.m. in the Auditorium of the Education Center, EPA, 401 M Street SW., Washington, DC 20460.

**ADDRESSES:** Send written comments to Murlene Lash, Comment Clerk, State Programs Division, Office of Drinking Water (WH-550E), Environmental Protection Agency, 401 "M" Street, SW., Washington, DC 20460. A copy of the comments and supporting documents will be available for review during normal business hours at the EPA, Room 1101 East Tower, 401 "M" Street, SW., Washington, DC 20460. It is requested that anyone planning to attend the public hearing (especially those who plan to make statements) register in advance by calling or writing Murlene Lash at (202) 382-5522, EPA, WH-550E, 401 "M" Street, SW., Washington, DC 20460. Persons planning to make statements at the hearing are encouraged to submit written copies of their remarks at the time of the hearing.

**FOR FURTHER INFORMATION CONTACT:** Ralph Langemeier, Chief, Drinking Water Branch, Water Management Division, Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101, telephone (913) 236-2815; or, Carl Reeverts, Deputy Director, State Programs Division, Office of Drinking Water, 401 M Street, SW., Washington, DC 20460, telephone (202) 382-5522.

**SUPPLEMENTARY INFORMATION:**

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### I. Statutory Requirements

#### *A. General Public Notification Requirements*

On June 19, 1986, the Safe Drinking Water Act, 42 U.S.C. 300f, *et seq.*, ("SDWA" or "the Act") was amended. Section 1414(c), as amended, requires owners or operators of public drinking water systems to notify consumers when certain violations of the National Primary Drinking Water Regulations (NPDWR) occur, when variances or exemptions are in effect, and whenever the systems fail to comply with any schedule prescribed pursuant to a variance or exemption. The Amendments require that, by September 19, 1987, EPA amend the NPDWR "to provide for different types and frequencies of notice based on the differences between violations . . . tak[ing] into account the seriousness of any potential adverse health effects which may be involved." Under the Amendments, EPA must prescribe the form, manner, and frequency for giving notice under section 1414(c).

#### *B. Public Notification Requirements Pertaining to Lead*

The SDWA Amendments also added a new section 1417 prohibiting the use of certain lead pipe, solder, and flux in (1) the installation or repair of any public water system, or (2) any plumbing in a residential or nonresidential facility connected to a public water system and providing water for human consumption. Subsection 1417(a)(2) requires each public water system to identify and provide notice to persons who may be affected by lead contamination in their drinking water, when such contamination results from either the use of lead in the construction materials of the system and/or corrosivity of the water supply sufficient to cause leaching of lead from plumbing systems. Notification is required even if the system is in compliance with the maximum contaminant level for lead.

The Amendments specify that the manner and form of the notice is to be prescribed by the EPA Administrator. The notice must provide a clear and readily understandable explanation of (1) the potential sources of lead in the drinking water, (2) potential adverse health effects, (3) reasonably available methods of mitigating known or potential lead content in drinking water, (4) any steps the system is taking to mitigate lead content in drinking water,

and (5) the necessity for seeking alternative water supplies, if any.

Section 1417(b) provides that the public notification requirements in section 1417(a)(2) shall be enforced in all States as of June 19, 1988. EPA is authorized to withhold up to five percent of a State's section 1443(a) public water system supervision program grant if the Agency determines that the State is not enforcing the prohibition and public notice requirements for lead.

## II. Discussion of Today's Proposed Rules

### *A. General Public Notification Requirements*

The public notification requirements established by the SDWA Amendments of 1986 apply to owners and operators of public water systems which (1) fail to comply with an applicable maximum contaminant level (MCL), treatment technique requirement or testing procedure prescribed by a NPDWR, (2) fail to perform monitoring as required by section 1445(a) of the SDWA, (3) have variances or exemptions under sections 1415(a)(1)(A), 1415(a)(2), or 1416 of the Act, or (4) fail to comply with the requirement of any schedule prescribed pursuant to a variance or exemption. (NOTE: For the sake of simplicity, we refer to all four events as "violations" throughout this notice).

The SDWA Amendments require that EPA amend the public notification requirements of the NPDWR to provide for different types and frequencies of notice based on the differences between violations and the seriousness of any potential adverse health effects which may be involved. The current public notification rules in 40 CFR 141.32 are organized according to type of public water system. To better reflect the new requirements, EPA has organized the proposed rule by type of violation. Two groups, or tiers, of violations are proposed. Tier 1 violations require more stringent public notification; Tier 2 requires less less stringent notice requirements.

The proposed organizational scheme appears in Table 1. As illustrated in Table 1, the Tier 1 category includes failure to comply with either an MCL or treatment technique prescribed in the NPDWR. Tier 2 includes failure to comply with monitoring and testing procedures, operation under a variance and exemption, and failure to meet a variance or exemption compliance schedule. EPA is considering an option to classify certain monitoring and testing procedure violations as Tier 1 violations. For instance, it may be appropriate to include as Tier 1 violations those monitoring violations that continue over an extended period of time. Alternatively, this option may include monitoring and testing procedure violations of NPDWRs that pose an acute health risk (for example, biological contaminants and nitrates). EPA requests comment on the classification system in general and the option to classify certain monitoring and testing procedure violations as Tier 1.

TABLE 1.—PROPOSED CLASSIFICATION OF VIOLATIONS FOR PUBLIC NOTICE

| Violation type | SDWA reference |
|---|---|
| Tier 1: | |
| 1. Failure to comply with MCL. | Section 1414(c)(1)(A). |
| 2. Failure to comply with prescribed treatment technique. | Do. |
| Tier 2: | |
| 1. Failure to comply with monitoring requirements. | Section 1414(c)(1)(B). |
| 2. Failure to comply with a testing procedure prescribed by a NPDWR. | Section 1414(c)(1)(A). |
| 3. Operating under a variance/exemption. | Section 1414(c)(2)(A). |
| 4. Failure to meet variance or exemption schedule. | Section 1414(c)(2)(B). |

### 1. Overview of Proposed Requirements

The proposed public notification requirements would apply to both community and noncommunity water systems as defined by 40 CFR 141.2. A public water system is a system for the provision of piped water for human consumption, if such system has at least fifteen service connections, or regularly serves an average of at least 25 individuals daily at least 60 days out of the year. A community water system is a public water system that serves at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents. A noncommunity water system is a public water system that is not a community water system. A summary of the proposed public notification requirements for community and noncommunity water systems and a comparison of the major differences between the current and proposed rules appear in Table 2.

*a. Community water systems.* For community water systems, the current rules require notice by newspaper, mail delivery, and electronic media for Tier 1 violations. Notice by posting is required where no daily or weekly newspaper of general circulation exists. Waiver of newspaper and electronic media notice for a community water system is permitted where the primacy agent determines in writing that the violation has been "corrected promptly after discovery, the cause of the violation has been eliminated, and there is no longer a risk to public health."

The proposed rule would require notice by both newspaper and mail delivery for Tier 1 violations, with notice by posting required where no daily or weekly newspaper of general circulation exists. In addition, the proposed rule requires that the public notice be delivered to electronic media (i.e., the principal radio and television stations) serving the area served by the public water system when the violation poses an acute risk to human health. EPA is proposing to waive notice by mail delivery where the violation has been corrected within 30 days.

Time frames for notification have been revised to be consistent with the Amendments. EPA proposes that, for community water systems, newspaper notice for all Tier 1 violations take place within 14 days of the occurrence of the violation, that notice to electronic media take place within seven days for violations that pose acute risks, and that initial notice by mail be given within 30 days of the occurrence of the violation (unless it has been corrected). For Tier 2 violations, EPA is proposing initial notice within 3 months for notification by newspaper, or posting in the absence of a daily or weekly newspaper. The proposed rule would also require community water systems which continue to be in violation of any Tier 1 or Tier 2 violation to give quarterly repeat notice by mail for the duration of the violation (or variance or exemption) as required in the current rule. The proposed rule also allows notice by the primacy agent in lieu of the owner or operator. Note that, when the primacy agent gives notice under this provision, the public water system remains legally responsible for meeting the public notification regulation requirements.

EPA also proposes that community water systems include mandatory health effects information (specified in this rule) in their notices of (1) MCL violations, (2) issuance or continued existence of variances and exemptions, and (3) violations of variance and exemption schedules. In addition, EPA is proposing to require community water systems to inform new customers of any violation existing at the time service begins. Notice must take place prior to, or at the time, service begins. Further, in all instances where public notification is required, EPA is proposing that the notice include the telephone number of the community water system's owner and/or operator so that customers may obtain further information regarding information in the notice.

*b. Noncommunity water systems.* For noncommunity water systems, the public notification regulations currently

TABLE 2.—COMPARISON OF CURRENT VS. PROPOSED PUBLIC NOTIFICATION REQUIREMENTS

| | General notice | | | Posting | | Timing | | Special notice | Content | |
|---|---|---|---|---|---|---|---|---|---|---|
| | Newspaper | Mail delivery | Electronic media | In lieu of gen. notice rquirmts | In absence of newspaper | Initial Notice within | Repeat notice | Notice to new billing units | Health effects info | Phone No. of supplier |
| Community PWS: | | | | | | | | | | |
| *Tier 1:* | | | | | | | | | | |
| Current rule | X[w] | X | X[w] | | X | Newsp=14 days. Mail=30 days. Elec=7 days... Post=Unspec. | Newsp=none Mail=qtrly Elec=none Post-contin | | X | |
| Proposed rule | X | X[w] | X[e] | | X | Newsp=14 days. Mail=30 days. Elec=7 days... Post=14 days. | Newsp=none Mail=qtrly Elec=none Post=contin | X | X[c] | X |
| *Tier 2:* | | | | | | | | | | |
| Current rule | | X | | | X | Mail=3 months. Post=Unspec. | Mail=qtrly Post=contin | | | |
| Proposed rule | X | | | | X | Mail=none Newsp=3 months. Post=3 months. | Mail=qtrly Newsp=none Post=contin | | [d] | X |
| Noncommunity PWS: | | | | | | | | | | |
| *Tier 1* | | | | | | | | | | |
| Current rule | | | | X | | Unspecified | Continuous | | X | |
| Proposed rule: | | | | | | | | | | |
| Option 1 | X | X[w] | X[e] | | X | Newsp=14 days. Mail=30 days. Elec=7 days... Post=14 days. | Newsp=none Mail=qtrly Elec=none Post=contin | | X[c] | X |
| Option 2 | | | | X | | 14 days | Continuous | | X[c] | X |
| *Tier 2:* | | | | | | | | | | |
| Current rule | | | | X | | Unspecified | Continuous | | X | |
| Proposed rule: | | | | | | | | | | |
| Option 1 | X | | | X | | 3 months | Quarterly | | X[d] | X |
| Option 2 | | | | X | | 3 months | Continuous | | X[d] | X |

Notes:
X=Required for all systems.
X[c]=Content is specified for all Tier 1 violations.
X[w]=Requirement may be waived.
X[d]=Content is specified for variance and exemptions only.
X[e]=Required when violation poses acute risk to human health.

in effect provide that "the supplier of water shall give notice by continuous posting of . . . (any violation listed in section 1414(c)) or granting of a variance or exemption to the persons served by the system as long as the failure or granting of a variance or exemption continues." The current rule also allows notice by the primacy agent in lieu of the owner or operator. The timing of the initial notice for noncommunity water systems is not addressed in the current rule, but EPA has generally considered it to be the same as for community water systems.

Today's proposal gives owners or operators of noncommunity water systems the option of notifying either (1) in the same manner as proposed for community water systems (i.e., a combination of newspaper notice, notice to electronic media for violations posing acute risks, and follow-up notice by mail), or (2) by continuous posting. The timing of these notices would be the same for noncommunity water systems as proposed for community water systems. For the second option described above, this means that notification by posting would begin within 14 days for Tier 1 violations. Likewise, the timing for Tier 2 violations would be three months. The requirements for mandatory health effects information, and inclusion of the telephone number of the supplier in the notice, would apply to noncommunity water systems as they would community water systems.

In the notice proposing NPDWRs for certain volatile organic chemicals (VOCs), EPA announced that it was considering amending the definition of "community water system" to include noncommunity water systems serving nontransient users (e.g., schools, factories, daycare centers), and proposed a revised definition for comment. (See 50 FR 46918, November 13, 1985). The amended definition would apply to NPDWRs for VOCs and all other future NPDWRs. In developing this public notification proposal, EPA considered whether nontransient noncommunity water systems that are subject to NPDWRs should comply with the public notification requirements for community water systems, or be allowed to comply with the notice requirements for noncommunity water

systems proposed in this rule. EPA is considering allowing the nontransient noncommunity water systems which are subject to future NPDWRs to comply with the public notification regulations proposed for noncommunity water systems because it believes the option of posting (in lieu of newspaper, electronic media, and mail notice) is effective and therefore appropriate for these systems. Further, the notice to new billing units required of community water systems does not make sense for nontransient noncommunity water systems. EPA invites comment on which public notification requirements should apply to nontransient noncommunity water systems subject to NPDWRs.

2. Discussion of Specific Provisions

*a. Manner of notice.* Section 1414(c) of the SDWA, as amended, provides that EPA "shall specify the types of notice to be used to provide information as promptly and effectively as possible taking into account both the seriousness of any potential adverse health effects and the likelihood of reaching all affected persons. Notification of violations shall include notice by general circulation newspaper serving the area and, whenever appropriate, shall also include a press release to electronic media and individual mailings." EPA is proposing that newspaper notice (or its equivalent, in lieu of newspaper notice, as discussed below) be required for all violations.

EPA is also proposing that owners and operators of community water systems notify each new billing unit of any existing violation of an existing maximum contaminant level or treatment technique at the time service begins. Notice must take place prior to, or at the time, service begins. The purpose of this requirement is to inform new customers of potential health hazards. In order to avoid the additional time and expense which would be involved in the preparation of a new notice each time service to a new customer begins, EPA is proposing that the public water supply provide a copy of the most recent public notice issued under proposed § 141.32(a), unless it has corrected the violation. Comments concerning this new requirement are requested.

*Mail delivery of notice of violation.* In addition to newspaper notice, today's proposal also would require mail notice within 30 days of a Tier 1 violation. This requirement can be met by including the notice with the water bill, if the water bill is sent within 30 days.

The SDWA Amendments also state that the EPA Administrator shall specify the types of notice to be used to provide information as promptly and effectively as possible, taking into account the seriousness of any potential health effects, and the likelihood of reaching all affected persons. The proposed rule reduces the duration of newspaper notice from three consecutive days to a one-time publication. While this reduces the cost of newspaper notice, the likelihood of the notice coming to the attention of the consumer decreases. Also, consumers may not purchase newspapers or read notices. Therefore, considering the seriousness of Tier 1 violations, the Agency does not believe notice by newspaper alone is sufficient for these violations. In developing the proposed rule, EPA considered two types of additional notices: (a) Individual mailed notice to billing units, and (b) individual notice by hand delivery to all known or identifiable affected consumers.

The current rule requires individual mailed notice: § 141.32(a) requires such delivery "by inclusion of a notice in the first set of water bills of the system issued after the failure or grant (of a variance or exemption)." EPA proposes to retain this requirement for Tier 1 violations. Notice could be mailed with the water bill or mailed separately. Proposed § 141.32(a)(1)(B) provides that mail delivery may be waived by the primacy agent in writing where the primacy agent determines that the violation has been corrected within 30 days.

EPA requests comment on a second type of additional notice, individual notice by hand delivery. EPA considered proposing that individual delivery by direct mail or mailed with the water bill be supplemented by hand delivery or posting at multiple family dwellings, apartment complexes and other locations where individual consumers may not receive a water bill. However, as hand delivery of public notice might be difficult and impractical to carry out as a routine matter, EPA has not proposed this requirement. Nevertheless, such a requirement would provide direct consumer information where, for example, the owner of the apartment building or apartment complex receives the water bill and does not reside at the location nor make the information available to the residents. Although EPA is not proposing this requirement, the Agency recommends and encourages its use in appropriate circumstances.

*Press release to electronic media.* The SDWA Amendments provide that notice "whenever appropriate, shall also include a press release to electronic media. . . ." The current public notification requirements provide that community water systems which fail to comply with an applicable maximum contaminant level shall, in addition to mail and newspaper notice, furnish "a copy of the notice to the radio and television stations serving the area served by the system" within 7 days. EPA is proposing to require that the public notice be sent to electronic media (i.e., the principal radio and television stations) serving the area served by the public water system for all Tier 1 violations that pose an acute risk to public health. The proposed rule requires this notice to be given as soon as possible but in no case later than seven days after the violation occurs. This is similar to the current rule, except that the proposed notice to electronic media would be required only for violations which pose an acute risk, rather than for all MCL violations. EPA believes acute health risks require immediate notice and special precautions (e.g., notices to boil water when high coliform levels exist or to avoid the use of high nitrate water for infants) to protect public health.

EPA views the proposed requirements as the minimum necessary and encourages owners and operators of public water systems to consider wider use of the electronic media where appropriate to notify consumers of conditions in the drinking water that may threaten their health and well being. The primacy agent of course has broad discretion to define acute risk or prescribe other criteria that may require use of electronic media.

*Notice in lieu of newspaper, electronic media, and mail notices.* As described earlier, EPA proposes to retain the posting requirement for public water systems in areas not served by a weekly or daily newspaper and to allow continuous posting in lieu of newspaper, electronic media, and mail notice by noncommunity public water systems.

EPA promulgated the current regulation allowing posting by noncommunity public water systems, found at 40 CFR 141.32(d), on August 27, 1980 (45 FR 57332) under statutory language similar to that in the 1986 Amendments. In its notice of proposed rulemaking of July 19, 1979 (44 FR 42246), the Agency justified this provision on the basis that the paramount concern of the transient users of a noncommunity public water system is the current quality of the drinking water; transients are generally less interested in the past problems of the noncommunity system, and they are generally less active in lobbying for correction of the system's problems. Further, transients may not have wide access to local media. Also, it

would be difficult to identify users and their addresses, making subsequent mail notice impractical as well. Posting was viewed as the most effective and efficient way to address the immediate concerns of the transient user.

EPA believes that Congress' intent in revising the public notice requirements was to avoid ineffective notices and strengthen the effectiveness of notices of more serious violations. The boundaries of noncommunity water systems such as campgrounds, service stations, and highway rest stops can easily be delineated; therefore, the ability to reach all affected parties, and avoid unnecessary notice to those persons not affected by the violation, is high. EPA also believes that a requirement for continuous posting in a conspicuous place, which provides notice on an ongoing basis, is more stringent than a combined one-time newspaper notice which the posting requirement would replace. Therefore, EPA today proposes to retain the posting requirement for community water systems in areas not served by a weekly or daily newspaper, and to allow continuous posting in lieu of newspaper, electronic media, and mail notice by noncommunity water systems.

*b. Frequency of notice.* The SDWA Amendments provide that "notice of any violation of a maximum contaminant level or any other violation designated by the Administrator as posing a serious potential adverse health effect shall be given as soon as possible, but in no case later than 14 days after the violation. Notice of a continuous violation other than a maximum contaminant level shall be given no less frequently than every three months. Notice of violations judged to be less serious shall be given no less frequently than annually."

In keeping with this provision, today's proposal would require initial public notice (i.e., newspaper notice or posting in lieu of newspaper notice) for MCL violations within 14 days. EPA is also proposing that the initial notice for failure to comply with the treatment technique requirements prescribed under the NPDWR must also occur within 14 days of the violation. In addition, notice to electronic media for MCL and treatment technique violations that pose an acute risk to human health are required as soon as possible but in no case later than seven days from the date of the violation.

Initial notice within three months for monitoring and testing procedure violations, variances, and exemptions (Tier 2 violations) is retained from the current regulation. The proposal would require notice to be repeated quarterly for any Tier 1 or Tier 2 violation continuing beyond this time period or for repeated violations of the same requirement, until the violation ends. Where posting is required in lieu of newspaper notice, initial notice must begin within the time frames described above, and be continuous thereafter for as long as the violation exists.

EPA also considered requiring owners and operators of public water systems to provide their customers with an annual summary of the overall compliance status of the system. In the past, EPA has received comments that, under the current rule, consumers often ignore or fail to realize the significance of public notices received sporadically with water bills. It was suggested that an annual summary would have significant impact on the consumer, particularly for those public water systems which repeatedly violate the requirements of the NPDWRs. The Agency is concerned, however, that this additional requirement could be administratively burdensome to small public water systems and redundant with the general notice requirements. EPA requests comments on whether an annual summary requirement is appropriate.

*c. Form and content of public notices—*

*General.* The SDWA Amendments specify that the public notice "shall provide a clear and readily understandable explanation of the violation, any potential adverse health effects, the steps that the system is taking to correct such violation, and the necessity for seeking alternative water supplies, if any, until the violation is corrected." EPA is proposing to revise the current regulatory language concerning the form of the public notice in § 141.32(d) to meet the amended requirements of the Act.

Proposed § 141.32(d) also states that the notice shall be conspicuous and shall not contain highly technical language, unnecessarily small print, or similar problems that frustrate the purpose of the notice. The requirement for bilingual notice, where appropriate, is retained from the current rule. EPA plans to provide additional information concerning this provision, including sample notices, as guidance.

*Health effects information.* Section 141.32(e) of the proposed rule requires that specific language provided by EPA be included in public notices of failure to comply with specified maximum contaminant levels, treatment techniques, notices of variances and exemptions from the NPDWRs, and notices of failure to comply with variance and exemption schedules. The required language specifies, in non-technical terms, what adverse health effects may occur as a result of the violation.

The mandatory health effects information in § 141.32(e) as proposed covers the seven volatile organic chemicals for which EPA proposed MCLs in November, 1985, and fluoride, for which EPA promulgated a revised MCL in April, 1986. In addition, EPA is proposing mandatory health effects language for the paradichlorobenzene (p-DCB) MCL, which will be reproposed soon in a separate **Federal Register** notice. MCLs for the eight volatile organic chemicals (including p-DCB) will be promulgated in June, 1987. EPA is not, in this rulemaking, requesting public comment on the specifc MCLs proposed for p-DCB or the other seven VOCs. Comments on the proposed MCL for p-DCB, and whether it should be classified as a probable human carcinogen, may be submitted as specified in the separate **Federal Register** notice referenced in this paragraph.

EPA will include mandatory health effects language for public notices for other contaminants in all future NPDWR proposals and promulgate such language with the final NPDWRs. The Agency is not proposing mandatory health effects language for violations of the existing national interim primary drinking water regulations (NIPDWRs). EPA expects to revise all existing NIPDWRs within the next three years and promulgate them as new NPDWRs. Mandatory health effects language will be included in these new rules. In the absence of health effects language established by rule, the proposal would require public water systems to follow the general guidelines in § 141.32(d) in developing language to describe potential health effects.

Requiring systems to use specific health effects language is intended to ensure that each notice includes a consistent and accurate summary of the toxicological information pertaining to a specific contaminant. The Agency believes that this requirement will ensure more effective public notices. A 1981 survey, "Study of the Cost and Effectiveness of the Public Notification Requirements of the Safe Drinking Water Act of 1974," reported that, of the 82 systems responding to a question on effectiveness, 61 percent said their public notices were not effective, 23 percent said they were somewhat effective, and 16 percent said they were very effective. By requiring the use of specific language, EPA believes that it will be able to improve the quality and, in turn, the effectiveness of public notices.

The use of mandatory text will also aid in the enforcement of the public notification requirements. EPA regional offices and primacy agents will be able to readily determine if public notices have adequate health effects information by the presence or absence of the required language.

EPA believes that improvements in the number of systems complying with the public notification requirements and in the quality of the notices will have a significant impact on improving compliance with drinking water regulations. The public notices required by the SDWA are intended to be a mechanism for organizing both public pressure and support for bringing systems into compliance. In fact, the public notification requirements appear with the other SDWA enforcement provisions in Section 1414. Today's proposal would require that notices include specific language regarding health effects only; the public water system would have flexibility to determine the content of the remainder of the notice to reflect the particular circumstances of the violation. As required by section 1414(c)(2)(B), § 141.32(d)(1) would require public water systems to add additional text which discusses steps being taken to come into compliance, and the need (if any) for alternative supplies of water. Further, systems would have flexibility to add to the notice any additional information they believe to be necessary based on the circumstances of their specific violation.

In addition to mandatory health effects information, EPA is proposing that the text of the notice also contain the telephone number of the owner or operator of the public water system. This provision is intended to assist consumers who have questions in obtaining additional information. This provision is also intended to encourage greater consumer and operator involvement in the educational and informational aspects of public notification.

EPA solicits comments on this approach. Since comments pertaining to the health effects and the appropriateness of the MCL are addressed in the course of developing the MCLs, commenters are requested to confine their remarks on this notice to the adequacy of the proposed language for providing health effects information to the consumer.

*B. Revised Public Notice Requirements for Fluoride*

EPA is proposing in § 141.32(f) of the NPDWR to incorporate by reference the existing mandatory public notification language for fluoride contained in § 143.5(b) of the National Secondary Drinking Water Regulations. EPA promulgated both the maximum contaminant level (MCL) and secondary maximum contaminant level (SMCL) for fluoride on April 2, 1986 (50 FR 11396). Section 143.5(b) requires systems which exceed the SMCL to provide public notification to all consumers, using mandatory language contained in the rule. The language includes health effects information about both SMCL exceedances and MCL violations. Since systems which are in violation of the MCL (4.0 mg/l) necessarily exceed the SMCL (2.0 mg/l), the mandatory language in § 143.5(b) applies to MCL violations as well.

Several changes to the current fluoride SMCL notification rule (§ 143.5(b)) are necessary to reconcile its provisions with the public notification requirements in the SDWA Amendments, which were enacted after EPA promulgated the fluoride regulation. Public notices for violations of the fluoride MCL, like public notices for all other MCL violations, require information about the steps that the system is taking to achieve compliance. However, the prescribed fluoride notice in § 143.5(b) does not require such information. The SMCL rule also provides that no additional information may be added to the prescribed notice. In addition, the current SMCL notification provision has somewhat different distribution requirements from those proposed here for MCL violations.

To resolve these discrepancies, EPA is proposing to amend § 143.5(a) to limit its requirements (including the notice distribution requirements) to exceedances of the SMCL which are less than or equal to 4.0 mg/l. Systems which exceed 4.0 mg/l (the MCL for fluoride) would follow the public notification requirements prescribed in this proposal (§ 141.32) for all other MCL violations.

EPA believes that the identical mandatory language in § 143.5(b) will adequately inform individuals of the potential health effects of fluoride. Therefore, the proposed general public notification provisions would require notices of the fluoride MCL to use the same notice prescribed in § 143.5(b), i.e., the same notice required when the SMCL, but not the MCL, is exceeded. EPA is proposing to delete the current prohibition against including additional information in the prescribed notice, to allow systems to supplement their notice with information on what steps the system is taking to deal with the violation, as required by the Act.

It is important to note that EPA is proposing these changes to the fluoride provisions only to make them consistent with the SDWA Amendments. EPA is not reproposing or requesting comment on any other aspect of the fluoride regulations including (1) the appropriate MCL and SMCL for fluoride, (2) the discussion of health effects in the prescribed notice, or (3) the distribution requirements for notices of exceedances of the SMCL that are less than or equal to 4.0 mg/l in § 143.5(a).

*C. Public Notice Requirements Pertaining to Lead*

EPA proposes today to establish a new section in Subpart D, § 141.34, Public Notice Requirements Pertaining to Lead, in response to section 1417(a)(2) of the SDWA. Comments are solicited on the content, manner, frequency, and form of the notice being proposed today.

1. Applicability of Notice Requirement

Section 1417(a)(2) of the Act requires that all public water systems shall identify and provide notice to persons that may be affected by lead contamination of their drinking water where such contamination results from (1) the lead content in the construction materials of the system, and/or (2) the corrosivity of the water supply sufficient to cause leaching of lead.

The proposed rule would require public notice for lead by community water systems only. EPA believes that requiring noncommunity water systems to provide notice for lead would pose numerous difficult problems. The existing maximum contaminant level (MCL) for lead and the requirements for special monitoring for corrosivity characteristics under § 141.42 do not apply to noncommunity water systems. Therefore, monitoring data for determining whether users may be affected by lead contamination in their drinking water are not available for these systems. Further, it is not known what health effects may result from incidental exposure to lead by the infrequent users of noncommunity water systems.

EPA did consider the option of requiring the lead notice from nontransient, noncommunity water systems (e.g., schools, factories, daycare centers). These systems serve the same users over long periods of time, so the chronic health risks to users would be similar to the risks to residential populations. Under this option, the lead public notice requirements proposed for community water systems would also be required of nontransient, noncommunity water systems, except that notice by posting (in lieu of newspaper and direct mail notice) would be required and the

notice to new billing units would not apply. EPA invites comment on the proposal to require the public notice for lead by community water systems only and the alternative option to extend the requirement to nontransient, noncommunity water systems.

Under this proposal, public notice for lead would not be required if a community water system demonstrates to the primacy agent that either the construction materials in the water system (defined to include the residential or nonresidential facilities connected to the water system) are lead free, or by taking water samples for lead, the water system has water that is noncorrosive to lead-containing materials in the water system and all construction materials containing lead in the water system are at least five years old. However, EPA believes that few community water systems would qualify for this exemption.

2. Frequency of Notice

Section 1417(b)(2) of the Act states that the public notice requirements for lead "shall apply in all states effective 24 months after the enactment of this section." Therefore, under this proposal, the owners or operators of community water systems would be required to issue the initial notice for lead no later than June 19, 1988. Subsequent notice would be given annually for five years from the initial notice or the effective date of the State's lead ban, whichever is later. (The lead ban is mandated by sections 1417 (a)(1) and (b)(1)). EPA is proposing a five-year span because experience indicates that lead levels are substantially decreased five years after the last use of new lead solder in water supply systems.

Section 1417 requires public notice for lead even if there is no violation of the drinking water standard (i.e., MCL) for lead. Separate notice of a violation of the maximum contaminant level of the existing NPDWR lead standard would also be required; the general public notification requirements found at 40 CFR 141.32 would apply to such a notice.

3. Manner of Notice

Under this proposal, all community water systems must provide notice to persons that may be affected by lead contamination of their drinking water. EPA proposes that notice to the consumer be given by: mail delivery (direct mail or with the individual water bills), supplemented by newspaper notice. EPA is proposing that newspaper notices supplement the mail delivery of the lead notice, since mail delivery may not go to all affected persons (e.g., apartment renters that do not get water bills).

As proposed, § 141.34(f) allows the State to issue the public notice for lead on behalf of an owner or operator of an individual community water system. The State must comply with all requirements of this section regarding the manner, form, content, and frequency of the notice. Such notice would reduce the administrative burden on small water systems, while fulfilling the purpose of this provision.

EPA considered proposing that mail delivery be supplemented by hand delivery to individual units or posting at multiple family dwellings, apartment complexes, and other locations where individual consumers may not receive a water bill. Hand delivery is an effective means of providing information directly to consumers when, for example, the owner of the apartment building or apartment complex receives the water bill and does not reside on-site nor make the information available to the residents. EPA recommends and encourages its use where practical. The Agency is concerned, however, that hand delivery or posting might be difficult and impractical to carry out as a routine requirement. Therefore, EPA has not proposed this requirement. Comments are requested on whether EPA should require the public water system to arrange for hand delivery of notices to consumers that do not routinely receive a water bill, or posting to inform consumers residing in multiple-unit dwellings.

4. Form and Content of Notice

The SDWA Amendments require that public notices for lead be written in a clear and readily understandable manner. These notices must provide a clear and readily understandable explanation of the potential sources of lead in the drinking water, potential adverse health effects, reasonably available methods of mitigating known or potential lead content in drinking water, any steps the system is taking to mitigate lead content in drinking water, and the necessity for seeking alternative water supplies, if any.

Section 141.34(c) of the proposed rule lists these general requirements for the content of lead public notices. In addition to the general requirements outlined above, the proposed rule would require community water systems to include specific advice in the notice on how to minimize exposure to water likely to contain higher levels of lead. Such advice could include:

—Checking to see if lead pipes, solder, or flux have been used in plumbing that provides tap water.

—Where high lead content in drinking water is suspected or confirmed, running the water from the water faucet long enough to flush water from the pipes in the house (usually several minutes after several hours of disuse or from 5 to 30 seconds after major water use, such as showering or laundry), before drawing water for drinking or cooking.

—Using only the cold water faucet for drinking, cooking with, or preparing baby formula.

—Ensuring that new plumbing and plumbing repairs use lead free materials.

Section 141.34(d) of the proposed rule sets out health effects language that would be mandatory for all lead notices. The Agency believes that requiring specific language will ensure accurate and consistent toxicological information in every public notice and simplify the preparation of the individual notices. The community water system would have flexibility to draft the remainder of the notice to meet the requirements in § 141.34(c) to best reflect the specific circumstances of the individual systems

*D. Revised State Implementation Requirements*

In response to the revised general public notification requirements, EPA is also proposing to revise 40 CFR Part 142, National Primary Drinking Water Regulations Implementation. This part contains regulations for implementation and enforcement of the public water supply programs by States. EPA is proposing to revise § 142.16 State Public Notification Requirements, to require States to adopt regulations at least as stringent as the general public notification regulations under 40 CFR 141.32 as a condition of new or continued primacy.

This provision would replace the current State public notice program requirements in § 142.16, which lists the minimum conditions for State assumption of primacy. The regulations currently in § 142.16 are not as stringent as the public notification regulations in § 141.32. EPA solicits comment on whether State public notification requirements less stringent than the requirements of the proposed § 141.32 would meet the statutory requirements for primacy under section 1413(a)(2) (i.e., "[a State must have] adequate procedures for the enforcement of State regulations") and, if so, what these primacy requirements should be, given

the new minimum public notification requirements of section 1414(c).

### III. Request for Public Comment

EPA requests public comments and information on all aspects of this proposal, including the specific issues identified in the preamble (except as noted in the discussion of the mandatory health effects language for the volatile organic chemicals in section II.A.2.c. above and the fluoride provisions in section II.B. above).

### IV. Compliance With Executive Order 12291

Executive Order 12291 requires that a regulatory agency determine whether a new regulation will be "major" and, if so, that the Agency conduct a Regulatory Impact Analysis. A major rule is defined as a regulation which is likely to result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, federal, state, and local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Since the proposed rule does not meet the definition of a major regulation, the Agency is not conducting a Regulatory Impact Analysis.

This proposed rule was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any written comments from OMB to EPA and any response to these comments will be available for viewing at EPA, Room 1101 East Tower, 401 M Street SW., Washington, DC 20460.

### V. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* An Information Collection Request document ICR No. 0270 has been prepared by EPA and a copy may be obtained from: Eric Strassler, Information Policy Branch; EPA; 401 M Street SW. (PM-223); Washington, DC 20460 or by calling (202) 382-2709: Submit comments on these requirements to EPA and: Office of Information and Regulatory Affairs; OMB; 726 Jackson Place NW., Washington, DC 20503; Attention: Richard Otis. The final rule will respond to OMB and public comments on the information collection requirements.

### VI. Regulatory Flexibility Act

The Regulatory Flexibility Act requires that federal agencies prepare regulatory flexibility analyses assessing the impacts of proposed rules on entities such as small businesses, small organizations, and small governmental jurisdictions. Such analysis is not required, however, when the head of an agency certifies that a proposed rule will not have a significant economic impact on a substantial number of small entities.

EPA considers the information required by this rule to be the minimum necessary to effectively administer the public notification program. Since most of the requested information will be readily available, it is anticipated that little time will be needed to prepare the notification response. Any additional economic impact on the small public water systems resulting from implementation of the regulation is expected to be negligible. Accordingly, I certify that these proposed rules, if promulgated, would not have a significant impact on a substantial number of small entities. The Agency seeks comment and any additional information related to the potential impact of these proposed rules on small entities.

### List of Subjects

*40 CFR Part 141*

Chemicals, Intergovernmental relations, Radiation protection, Reporting and recordkeeping requirements, Water supply.

*40 CFR Part 142*

Administrative practice and procedure, Chemicals, Radiation protection, Reporting and recordkeeping requirements, Water supply.

*40 CFR Part 143*

Chemicals, Water supply.

Dated: March 28, 1987.

**Lee M. Thomas,**

*Administrator.*

For reasons set forth in the preamble, Title 40, Chapter I of the Code of Federal Regulations is proposed to be amended as follows.

## PART 141—[AMENDED]

1. The authority for Part 141 is revised to read as follows:

**Authority:** Secs. 1412, 1414, 1417, 1445, and 1450 of the Safe Drinking Water Act (42 U.S.C. 300g-1, 300g-3, 300g-6, 300j-4, and 300j-9).

2. Part 141 is amended by revising § 141.32 to read as follows:

**§ 141.32 General public notification requirements.**

(a) *Maximum contaminant level (MCL) and treatment technique violations.* The owner or operator of a public water system which fails to comply with an applicable MCL or treatment technique established by this part shall notify persons served by the system as follows:

(1) Except as provided in paragraph (a)(3) of this section, the owner or operator of a public water system must give notice:

(i) By publication in a daily newspaper of general circulation in the area served by the system as soon as possible, but in no case later than 14 days after the violation. If the area served by a public water system is not served by a daily newspaper of general circulation, notice shall instead be given by publication in a weekly newspaper of general circulation serving the area; and

(ii) By mail delivery of the notice of violation by direct mail or with the water bill not later than 30 days after the violation. The primacy agent may waive mail delivery if it determines that the owner or operator of the public water system in violation has corrected the violation within the 30-day period. The primacy agent must make the waiver in writing within the 30-day period; and

(iii) For any MCL or treatment technique violation that poses an acute risk to human health (e.g., high coliform, turbidity, or nitrate levels), by furnishing a copy of the notice to the principal radio and television stations serving the area served by the public water system as soon as possible but in no case later than seven days after the violation.

(2) Except as provided in paragraph (a)(3)(ii) of this section, following the initial notice given under paragraph (a)(1) of this section, the owner or operator of the public water system shall furnish notice at least once every three months by mail delivery (by direct mail or with the water bill) for as long as the violation exists.

(3)(i) In lieu of the requirements of paragraph (a)(1)(i) of this section, the owner or operator of a community water system in the area that is not served by a daily or weekly newspaper of general circulation must give notice within 14 days after the violation by continuous posting of notice of such violation, in conspicuous places within the area served by the system, for as long as the violation exists.

(ii) In lieu of the requirements of paragraphs (a)(1) and (2) of this section, the owner or operator of a noncommunity water system must give notice within 14 days after the violation by continuous posting of such violation, in conspicuous places within the area served by the system for as long as the violation exists.

(b) *Other violations, variances, exemptions.* The owner or operator of a public water system which fails to perform monitoring required by section 1445(a) of the Act, fails to comply with a testing procedure established by this part, is subject to a variance granted under section 1415(a)(1)(A) or 1415(a)(2) of the Act, is subject to an exemption under section 1416 of the Act, or fails to comply with the requirements of any schedule prescribed pursuant to a variance or exemption, shall notify persons served by the system as follows:

(1) Except as provided in paragraph (b)(3) of this section, the owner or operator of a public water system must give notice within three months after the monitoring violation, testing procedure violation, granting of a variance or exemption, or violation of a variance or exception schedule, by publication in a daily newspaper of general circulation in the area served by the system. If the area served by a public water system is not served by a daily newspaper of general circulation, notice shall instead be given by publication in a weekly newspaper of general circulation serving the area.

(2) Except as provided in paragraph (b)(3) of this section, when a violation of a monitoring requirement, testing procedure violation, or variance or exemption schedule is not corrected within the first three months following the date of violation, the owner or operator of the pubic water system shall furnish notice at least once every three months by mail delivery (by direct mail or with the water bill) for as long as the violation exists. Notice of the existence of a variance or exemption shall be given every three months from the date it is granted for as long as the variance or exemption remains in effect.

(3)(i) In lieu of the requirements of paragraphs (b) (1) and (2) of this section, the owner or operator of a community water system in an area that is not served by a daily or weekly newspaper must give notice by continuous posting of such violation, in conspicuous places within the area served by the system, beginning within three months and continuing for as long as the violation or failure exists, or the variance or exemption remains in effect.

(3)(ii) In lieu of the requirements of paragraphs (b) (1) and (2) of this section, the owner or operator of a noncommunity water system may give notice by continuous posting of such violation, in conspicuous places within the area served by the system, beginning within three months and continuing for as long as the violation or failure exists, or the variance or exemption remains in effect.

(c) *Notice to new billing units.* The owner of operator or a community water system shall give a copy of the most recent public notice for any existing violation of any maximum contaminant level or treatment technique requirement to all new billing units or hookups prior to or at the time service begins.

(d) *General content of public notice.* Each notice required by this section shall provide a clear and readily understandable explanation of the violation, any potential adverse health effects, the population at risk, the steps that the system is taking to correct such violation, the necessity for seeking alternative water supplies, if any, and any preventive measures the consumer should take until the violation is corrected. Each notice shall be conspicuous and shall not contain unduly technical language, unduly small print, or similar problems that frustrate the purpose of the notice. Each notice shall include the telephone number of the owner or operator of the public water system as a source of additional information concerning the violation. Where appropriate, the notice shall be bilingual.

(e) *Mandatory health effects information.* When providing the information on potential adverse health effects required by paragraph (d) of this section in public notices of violations of maximum contaminant levels, violations of treatment techniques, notices of issuance and continued existence of exemptions and variances from maximum contaminant levels, and notices of violation of variance and exemption schedules, the owner or operator of a public water system shall include the language specified below for each contaminant. (If language for a particular contaminant is not specified below at the time notice is required, this paragraph does not apply.)

(1) *Trichloroethylene.* Trichloroethylene (TCE) in drinking water is a health concern because it has been shown to cause cancer in mice and rats when given at very high doses over the animals' lifetime. Some chemicals that cause cancer in laboratory animals also may increase the risk of cancer in humans who are exposed over long periods of time. Although it has not been shown that exposure to trichloroethylene results in an increased cancer risk in humans, TCE is considered to be a probable human carcinogen because it has caused cancer in two species of laboratory animals. To reduce any potential risk of cancer or any other adverse health effects which may have been observed in laboratory animals at higher doses over the animals' lifetime, EPA has set a drinking water standard for trichloroethylene at 5 parts per billion (ppb).

(2) *Carbon tetrachloride.* Carbon tetrachloride in drinking water is a health concern because it has been shown to cause cancer in mice and rats when given at very high doses over the animal's lifetime. Some chemicals that cause cancer in laboratory animals also may increase the risk of cancer in humans who are exposed over long periods of time. Although it has not been shown that exposure to carbon tetrachloride results in an increased cancer risk in humans, carbon tetrachloride is considered to be a probable human carcinogen because it has caused cancer in two species of laboratory animals. To reduce any potential risk of cancer or any other adverse health effects which may have been observed in laboratory animals at higher doses over the animals' lifetime, EPA has set a drinking water standard for carbon tetrachloride at 5 parts per billion (ppb).

(3) *1, 2-Dichloroethane.* 1, 2-Dichloroethane in drinking water is a health concern because it has been shown to cause cancer in mice and rats when given at very high doses over the animals' lifetime. Some chemicals that cause cancer in laboratory animals also may increase the risk of cancer in humans who are exposed over long periods of time. Although it has not been shown that exposure to 1, 2-Dichloroethane results in an increased cancer risk in humans, it is considered to be a probable human carcinogen because it has caused cancer in two species of laboratory animals. To reduce any potential risk of cancer or any other adverse health effects which may have been observed in laboratory animals at higher doses over the animals' lifetime, EPA has set a drinking water standard for 1, 2-dichloroethane at 5 parts per billion (ppb).

(4) *Vinyl chloride.* Vinyl chloride in drinking water is a health concern because exposure has been shown to result in an increased cancer risk in humans who are exposed over long periods of time. To reduce the risk of cancer or any other adverse health

effects which may have been observed in laboratory animals at high doses over the animal's lifetime, EPA has set a drinking water standard for vinyl chloride at 1 part per billion (ppb).

(5) *Benzene.* Benzene in drinking water is a health concern because exposure has been shown to result in an increased cancer risk in humans who are exposed over long periods of time. To reduce the risk of cancer or any other adverse health effects which may have been observed in laboratory animals at high doses over the animals' lifetime, EPA has set a drinking water standard for benzene at 5 parts per billion (ppb).

(6) *1, 1-Dichloroethylene.* 1, 1-Dichloroethylene in drinking water is a health concern to humans who are exposed over long periods of time because there is some but not conclusive evidence that it may cause cancer in laboratory animals at high doses over the animals' lifetime. To reduce any potential risk of cancer or any other adverse health effects which may have been observed in laboratory animals at high doses over the animals' lifetime, EPA has set a drinking water standard for 1, 1-dichloroethylene at 7 parts per billion (ppb).

(7) *1, 1, 1-Trichloroethane.* 1, 1, 1-Trichloroethane in drinking water is a health concern because it has been shown to damage the liver, the nervous system, and the circulatory system of laboratory animals and humans at high doses. EPA has set a drinking water standard for 1, 1, 1-trichloroethane at 200 parts per billion (ppb) to protect against these effects with a margin of safety.

(8) *Para-dichlorobenzene.* Para-dichlorobenzene (p-DCB) in drinking water is a health concern because it has been shown to cause cancer in mice when given at very high doses over the animals' lifetime. Some chemicals that cause cancer in laboratory animals also may increase the risk of cancer in humans who are exposed over long periods of time. Although it has not been shown that exposure to para-dichlorobenzene results in an increased cancer risk in humans, p-DCB is considered to be probable human carcinogen because it has caused cancer in two species of laboratory animals. To reduce any potential risk of cancer or any other adverse health effects which may have been observed in laboratory animals at high doses over the animals' lifetime EPA has set a drinking water standard for para-dichlorobenzene at 5 parts per billion (ppb).

(9) *Fluoride.*

**Note.**—EPA is not specifying language that must be included in a public notice for a violation of the fluoride maximum contaminant level in this section because the provisions of paragraph (f) include the necessary information.

(f) *Public notices for fluoride.* Notice for violations of the maximum contaminant level for fluoride, notices of variances and exemptions from the maximum contaminant level for fluoride, and notices of violations of variance and exemption schedules for fluoride maximum contaminant levels shall consist of the public notice prescribed in § 143.5(b), plus a description of any steps which the system is taking to come into compliance.

(g) *Notices by primacy agent.* The primacy agent may give notice to the public required by this section on behalf of the owner or operator of the public water system.

3. Subpart D is amended by adding a new § 141.34 to read as follows:

**§ 141.34 Public notice requirements pertaining to lead.**

(a) *Applicability of public notice requirement.* (1) By June 19, 1988, the owner or operator of each community water system shall issue notice to consumers that may be affected by lead contamination of their drinking water where such contamination results from either the lead content in the construction materials of the public water distribution system, and/or corrosivity of the water supply sufficient to cause leaching of lead. The owner or operator shall issue subsequent notices annually for five years from the initial notice or the effective date of the State's lead ban, required by section 1417 of the Act, whichever is later. The owner or operator shall provide notice under this section even if there is no violation of the national primary drinking water regulation for lead.

(2) Notice does not have to be given under paragraph (a)(1) of this section if the system demonstrates to the State that the construction materials containing lead in the water system, including the residential or nonresidential facilities connected to the water system, are "lead free", or by taking water samples for lead, it has been determined that the water system has water that is non-corrosive to lead-containing materials and all the construction materials containing lead in the water system, including the residential or nonresidential facilities connected to the water system, are at least five years old. For the purpose of this paragraph, the term "lead free" when used with respect to solders and flux refers to solders and flux containing not more than 0.2 percent lead, and when used with respect to pipes and pipe fittings refers to pipes and pipe fittings containing not more than 8.0 percent lead.

(b) *Manner of notice.* The owner or operator of a community water system shall give notice to consumers by mail delivery (direct mail or with the individual water bills), and by newspaper notice.

(c) *General content of notice.* (1) Notices issued under this section shall provide a clear and readily understandable explanation of the potential sources of lead in the drinking water, potential adverse health effects, reasonably available methods of mitigating known or potential lead content in drinking water, any steps the water system is taking to mitigate lead content in drinking water, and the necessity for seeking alternative water supplies, if any.

(2) Each notice shall also include specific advice on how to determine if materials containing lead have been used in the house or in the water distribution system and how to minimize exposure to water likely to contain higher levels of lead. Each notice shall be conspicuous and shall not contain unduly technical language, unduly small print, or similar problems that frustrate the purpose of the notice. Each notice shall contain the telephone number of the owner or operator of the community water system as a source of additional information regarding the notice. Where appropriate, the notice shall be bilingual.

**Note** to paragraph (c).—Each notice should advise consumers to use only the cold water faucet for drinking, cooking with, or preparing baby formula, and to run the water until it gets as cold as it is going to get before each use. If there has recently been major water use in the household, such as showering or bathing, flushing toilets, or doing laundry with cold water, this should take 5 to 30 seconds; if not, flushing could take as much as several minutes. Each notice should also advise consumers to check to see if lead pipes, solder, or flux have been used in plumbing that provides tap water and to ensure that new plumbing and plumbing repairs use lead free materials.

(d) *Mandatory health effects information.* When providing the information in public notices required under paragraph (c) on the potential adverse health effects of lead in the drinking water, the owner or operator of the community water system shall include in the notice the specific language which appears below:

Lead has no known useful function in the body. It is a well-known toxin, causing damage to the nervous system, the blood-forming processes, the gastrointestinal system, and the kidneys. Recent studies have

shown that lead can also cause cognitive damage (e.g., damage to perception, memory, and judgment), stunt children's growth, and raise blood pressure in adult males, even at low levels of exposure. These health effects can range from relatively subtle biochemical changes at low lead body burden levels to severe retardation at high levels or even death at higher levels. Young children and fetuses are most at risk of damage from exposure to lead.

(e) *Notice to new billing units.* The owner or operator of a community water system shall give all new billing units or hook-ups a copy of the notice described in this section prior to or at the time service begins.

(f) *Notice by State.* Notice to the public required by this section may be given by the State on behalf of the owner or operator of the community water system.

(g) *Enforcement by State.* All States shall enforce the requirements of this section by June 19, 1988, as required by section 1417(b)(2) of the Act. If the Administrator determines that a State is not enforcing these requirements, the Administrator may withhold up to five percent of the State program grant fund under section 1443(a) of the Act.

## PART 142—[AMENDED]

1. The authority citation for Part 142 is revised to read as follows:

**Authority:** Secs. 1413, 1414, 1415, 1416, 1417, 1445, and 1450 of the Safe Drinking Water Act (42 U.S.C. 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–4, and 300j–9).

2. Part 142 is amended by revising § 142.16 to read as follows:

### § 142.16 State public notification requirements.

Each state program qualifying for primary enforcement responsibility shall include, at a minimum, the requirements for public notification found in § 141.32 of this title.

## PART 143—[AMENDED]

1. The authority citation for Part 143 is revised to read as follows:

**Authority:** Secs. 1412(c), 1445, and 1450 of the Safe Drinking Water Act, 42 U.S.C. 300g–1(c), 300j–4 and 300j–9.

2. In § 143.5 paragraph (a) and the introductory text of paragraph (b) are revised to read as follows:

### § 143.5 Compliance with secondary maximum contaminant level and public notification for fluoride.

(a) Community water systems, as defined in 40 CFR 141.2(e)(i), that exceed the secondary maximum contaminant level for fluoride as determined by the last single sample taken in accordance with the requirements of § 141.23 or any equivalent State law, but do not exceed the maximum contaminant level for fluoride as specified by § 141.62 or any equivalent State law, shall send the notice prescribed in paragraph (b) of this section, to all billing units annually, all new billing units at the time service begins, and the State public health officer.

(b) The notice required by paragraph (a) of this section shall contain the following language, including the language necessary to replace the superscripts:

* * * * *

[FR Doc. 87–7386 Filed 4–3–87; 8:45 am]

BILLING CODE 6560–50–M

federal register

Monday
April 6, 1987

Part III

# Department of Agriculture

## Agricultural Marketing Service

7 CFR Part 994

**Egg Marketing Order; Establishment of Programs Relating to Research, Consumer Education, and Advertising; Proposed Rule and Referendum Order**

**DEPARTMENT OF AGRICULTURE**

**Agricultural Marketing Service**

**7 CFR Part 994**

**[Docket No. EMO-1]**

## Egg Marketing Order; Establishment of Programs Relating to Research, Consumer Education, and Advertising

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed rule and referendum order.

**SUMMARY:** This decision proposes an egg marketing agreement and order which would authorize the establishment of programs and projects relating to research, consumer education, advertising, promotion, and product development for eggs, spent fowl, and products thereof. The order would provide for a 22-member national board consisting of producers and handlers and one public member to administer the order. Funds to administer the order would be obtained from mandatory non-refundable assessments levied on egg handlers. The first year assessment rate for the research and promotion programs would be set at one-half cent on each dozen eggs first handled. Subsequent maximum one-fourth cent increases up to a 1-cent maximum rate would be allowed following appropriate rulemaking procedures and approval of the Secretary.

**DATE:** The representative period for purposes of the referendum herein ordered is December 1, 1986, through February 28, 1987. The referendum shall be conducted between May 25 and June 19, 1987.

**FOR FURTHER INFORMATION CONTACT:** Janice L. Lockard, Poultry Division, AMS, USDA, Washington, DC 20250, Phone (202) 382-8132.

**SUPPLEMENTARY INFORMATION:**

Prior documents in this proceeding:

### Notice of Hearing

Issued December 10, 1985; published December 16, 1985 (50 FR 51344), as corrected December 23, 1985 (50 FR 52332).

Termination of Rulemaking Proceedings in Part: Issued October 20, 1986; published October 23, 1986 (51 FR 37578).

### Recommended Decision

Issued October 20, 1986; published October 24, 1986 (51 FR 37822).

This administrative action is governed by the provisions of Sections 556 and 557 of Title 5 of the United States Code, and therefore is excluded from the requirements of Executive Order 12291.

### Preliminary Statement

This decision is issued under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), hereinafter referred to as the "Act," and the applicable rules of practice and procedure governing formulation of marketing agreements and marketing orders (7 CFR 900.1 through 900.18).

The proposed marketing agreement and order, hereinafter referred to collectively as the "order," were formulated on the record of a public hearing held in Atlanta, Georgia, January 8–10, 1986; Little Rock, Arkansas, January 15–16, 1986; San Francisco, California, January 29–30, 1986; Philadelphia, Pennsylvania, February 5–6, 1986; and Chicago, Illinois, February 27–March 1 and March 3, 1986. The Notice of Hearing, published on December 16, 1985, contained a proposal submitted by an industry task force, composed of producers, handlers, and processors. The proposal contained, in addition to the research and promotion program, provisions for the voluntary removal of laying hens by producers during periods of extreme egg surpluses. The Agricultural Marketing Service proposed certain modifications of the proposal which included provisions requiring a public member on the proposed Egg Marketing Board; providing for a periodic continuance referendum; and authorizing establishment of regulations to implement a surplus removal program.

With respect to the surplus removal provisions of the proposed order, the proceedings for these provisions were terminated effective October 23, 1986 (51 FR 37578).

It is anticipated that the Egg Research and Promotion Order (7 CFR 1250.301 through 1250.363) authorized by the Egg Research and Consumer Information Act (7 U.S.C. 2701 *et seq.*) would be terminated if the proposed order is adopted.

During the hearing on the proposal, a number of witnesses, including producers, handlers, and State and regional producer and promotional organizations, testified in favor of the research and promotion provisions of the order. In addition, an economist appearing on behalf of the proponents presented evidence relating to the potential effectiveness of a sustained advertising program. In general, proponents testified that current American Egg Board (AEB) research and promotion activities authorized by the Egg Research and Consumer Information Act were inadequately funded. Proponents believed that strong research programs were needed to develop alternative uses for their products and to address questions regarding the specific role of eggs in maintaining optimum health. In addition, proponents summarized the effectiveness of the AEB advertising and promotion program especially during the early years of the program when available funds were greatest and advertising costs lower, and indicated that additional funds could help achieve the objective to increase consumption and demand. They also testified that they believe that the refund provision in the existing order is not equitable because it allows some producers to benefit from the research and promotion programs without contributing their share of program costs.

Opposition to the research and promotion program came primarily from food manufacturers who argued that assessments would be passed on to them and ultimately to consumers without their receiving any of the benefits. Opponents, including some producers, also asserted that a national research and promotion marketing order program was unnecessary and voluntary company-sponsored research and promotion programs have been highly successful in certain segments of the poultry industry.

In accordance with the provisions of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Administrator has determined that this action would not have a significant economic impact on a substantial number of small entities.

In the Notice of Hearing, interested persons were invited to present evidence at the hearing on the probable regulatory and informational impact of the order on small businesses. Based on the record evidence, a sizeable majority of both egg handlers and egg producers could be considered small businesses for purposes of the RFA. In that regard, considerable testimony was presented concerning the various operations existing in the egg industry, such as production methods and marketing.

The purpose of the RFA is to fit regulatory action to the scale of businesses subject to such action in order that small businesses will not be unduly or disproportionately burdened. The Act requires the application of uniform rules to regulated handlers. Marketing orders and rules proposed thereunder are unique in that they are normally brought about through group action of essentially small entities for their own benefit. Thus, both the RFA

and the Act are usually compatible with respect to small business entities. Since the handlers to be covered under this order are predominately small businesses, the order proposed in this proceeding would impose no disproportionate regulatory burdens on any groups of small entities within the industry.

The principal requirements of the order which would affect handlers are (1) a mandatory assessment to fund research and promotion programs and, (2) associated reporting and recordkeeping requirements. The order provides for an initial assessment of one-half cent per dozen eggs to be paid by the first handler of the eggs. The term "handle" includes processing, grading, or cartoning of eggs from a person's own production or from eggs purchased from another person. This term also includes placing eggs in the current of commerce, except as a common carrier of eggs owned by another person. "Handle" does not include washing and packing of nest run eggs or a producer's delivery of his/her own nest run eggs. Thus, firms performing these activities alone would not be subject to assessments. Producers would not have to pay the assessment unless they were also first handlers. Eggs produced by producers with fewer than 10,000 hens would not be subject to the assessments. The order also requires that every handler furnish to the Egg Marketing Board such information as will enable the Board to exercise its responsibilities and duties.

Record evidence indicates that under the current Egg Research and Promotion Order, as authorized by the Egg Research and Consumer Information Act, producers pay an assessment of 5 cents per 30-dozen case of eggs, which is approximately 0.17 cents per dozen. Under that order, assessments are collected and remitted by egg handlers to the AEB. The assessments provide funding for national research, promotion and advertising, and consumer education activities on eggs and spent fowl and products thereof. Producers may request refunds under that Act and, according to the latest available information, approximately 25 percent of the 2,199 producers participating in this program do so. Record evidence indicates that $7.6 million was collected under that order during 1985 and that refunds totaled $3.3 million. Under that order, both producers and handlers are subject to recordkeeping requirements and handlers are subject to reporting requirements.

Testimony and evidence of record suggest that the egg industry is now generally composed of four basic types of firms: (1) Handlers who market and/or process eggs, but who are not engaged in production; (2) independent producers who are engaged in egg production only and are not involved in the processing or marketing of eggs; (3) producers who produce eggs under contractual arrangements, but do not possess title to them; and (4) producer-handlers who are not only engaged in the production of eggs but also market and/or process eggs. Under the terms of the proposed order, firms that are involved in the handling of eggs whether as handlers or producer-handlers would be required to pay the assessments for those eggs for which firms were first handlers. Firms that are independent producers are not subject to assessments but many could nevertheless be affected indirectly by the operation of the order, if assessments are passed back to them from first handlers. Although there was testimony which recognized this possibility, the extent to which this pass back might occur was not clear. In addition, it was not clear whether contract producers would be affected if the producers with whom they have contractual arrangements chose to pass all or a portion of the assessment to them.

According to Statistical Reporting Service (SRS) figures, there were approximately 5,090.67 million dozen table eggs produced between December 1, 1984, and November 30, 1985. This figure includes production from flocks of 3,000 or more laying hens. The collection of the proposed initial assessment of one-half cent per dozen eggs produced from 10,000 or more laying hens would result in approximately $24 million available for funding the research, promotion, and consumer education programs.

According to AEB statistics for August 1986, there are 938 handlers remitting assessments under the Egg Research and Consumer Information Act. It is anticipated that all of these handlers under the current Egg Research and Promotion Order would be first handlers subject to the assessments under the proposed order. Of these handlers, approximately 80 percent may be classified as small entities. The proposed initial assessment of one-half cent per dozen eggs would be equivalent to approximately three-quarters of 1 percent of a handler's annual gross sales revenue from the sale of eggs. This is based on the Economic Research Service (ERS) average wholesale price of 66.4 cents per dozen. At the maximum rate of 1 cent provided in the proposed order, the assessment would be only 1½ percent of annual gross sales revenue. This assumes an average price to wholesalers of 66.4 cents per dozen, based on ERS' statistics. However, some handlers may be further processors and distributors of eggs and, therefore, could derive a significant proportion of their revenue from activities other than egg handling. This would result in lessening the impact of assessments on such firms. In addition, of the 938 handlers currently remitting assessments under the present Egg Research and Promotion Order, it is estimated that 741 of these handlers are also producers who are already subject to assessments under that order at the rate of 0.17 cents per dozen eggs marketed. This represents approximately one-fourth of 1 percent of a handler's annual gross sales revenue derived from the sale of eggs. Accordingly, for these handlers currently paying assessments, the impact of the initial assessment in the proposed order would be less, representing approximately one-half of 1 percent for the initial assessment and approximately 1 percent at the maximum 1-cent rate.

There was some testimony with regard to the possible increased costs of eggs purchased by food manufacturers because of the assessment. In such instances all or a portion of the assessments would be passed forward to processors from first handlers. However, the extent to which this might occur was not clear in the record; nor was it specified in testimony that if this did occur whether the cost to consumers of the food manufacturers' products would increase.

The reporting and recordkeeping requirements in the proposed order would not require any significant additional cost or effort for handlers. Presently, under the existing Egg Research and Promotion Order, handlers who remit assessments are required to submit reports showing the number of eggs marketed from their own production and/or from production of others. These requirements are comparable to the reporting requirements for handlers in the proposed order. The proposed 2-year record retention period is also the same as that required presently under the current order. In addition, ordinary business records maintained by handlers for other purposes would generally contain any other required information.

Accordingly, it is determined that the proposed provisions of the order would not have a significant impact on handlers.

There are no reporting or recordkeeping requirements in the proposed order for producers. These firms which are engaged only in the production of eggs, commonly referred to as independent producers, may nevertheless be affected by the proposed operations of the order. There was testimony at the hearing indicating that handlers could pass back to producers in the form of lower prices paid for eggs purchased all or a portion of the assessments paid by first handlers. However, the extent to which this might occur is not clear from the record evidence.

Testimony and record evidence indicate that the egg industry has undergone some dramatic changes in the last 20 to 30 years. There have been significant advances in productivity at the producer level, resulting in lower per unit average costs. Some producers have expanded their operations to take advantage of economics of size in egg production and marketing. In addition, many producers have vertically integrated their operation both forward and backward.

Today, the industry is characterized in general by fewer but larger producers, as well as a greater number of producers who perform functions other than egg production, such as grading, cartoning, and processing. The number of small- and medium-sized producers has declined along with their share of total output. The industry breakdown for producers as of August 1986 is as follows:

| No. of layers | No. of producers | Percent of total | Monthly production (thousand dozens) | Percent of total |
|---|---|---|---|---|
| 3,001–10,000 | 549 | 25.0 | 5,960.6 | 1.6 |
| 10,001–20,000 | 483 | 22.0 | 11,710.9 | 3.2 |
| 20,001–50,000 | 512 | 23.3 | 27,570.3 | 7.6 |
| 50,001–100,000 | 275 | 12.5 | 32,905.6 | 9.0 |
| 100,001–500,000 | 283 | 12.8 | 104,222.5 | 28.6 |
| 500,001–1,000,000 | 64 | 2.9 | 74,946.0 | 20.6 |
| More than 1,000,000 | 33 | 1.5 | 106,873.5 | 29.4 |
| Total | 2,199 | ..... | 364,189.4 | ..... |

Source: Unpublished AEB Count of Active Producers by Size, August 1986.

The trend toward larger but fewer firms is also illustrated in a recent report in a trade journal (*Poultry Tribune*, December 1985) which suggested that only 61 producers accounted for approximately 56 percent of total egg production.

Of the 2,199 producers reported by AEB who are engaged in egg production in the 48 contiguous States, it is estimated that approximately 1,690 would be considered small entities. This is based upon a production level of 100,000 layers using a figure of 247 eggs per year (U.S.D.A. SRS, *Layers and Egg Production 1985 Summary*). However, not all producers would in all instances be indirectly impacted by the proposed order because the order provides for a 10,000 layer exemption. Accordingly, firms producing eggs from less that 10,000 layers would not be considered producers for purposes of the order and handlers would not be subject to assessments in handling their eggs. This exemption could insulate at least 549 small producers owning laying hens in the 3,001 to 10,000 range from any potential impact of the order. Information regarding the exact number of producers owning less than 3,001 laying hens is not known.

It is unclear from the testimony and record evidence the extent of which handlers would pass back the impact of assessments upon independent producers. In this regard, much would depend on the bargaining power of the first handler relative to that of the producer or the next buyer in the marketing chain. Assuming, however, that assessments would be passed directly back to producers, their gross annual sales revenue would be reduced by not more than an estimated 1 percent. This is based on ERS' 1985 average price to producers of 50 cents per dozen. For those producers who are currently paying the AEB assessments of 0.17 cents per dozen eggs, the potential impact would be approximately 0.66 percent of sales revenues. In addition, for those producers who are diversified with other types of enterprises, the proportion of total revenues impacted by assessments would be less. Accordingly, it is determined that the order provisions would not have a significant impact on a substantial number of producers who might be impacted by the order provisions.

According to AEB statistics, it is estimated that there are 741 producers who are not only engaged in the production of eggs, but also market and/or process eggs. The impact or potential impact of the order provisions on these producer-handler firms would be as discussed above for producers and handlers. The impact of the order may vary depending upon the extent to which these firms are engaged in production, handling, or other activities. Nonetheless, based upon the foregoing, it is determined that whether viewed as handlers, producers, or both, the impact on these firms would not be substantial.

Record evidence shows that, in addition to the national research and promotion program, conducted by the AEB pursuant to the Egg Research and Promotion Order, there are approximately 36 State and 2 regional promotion organizations which conduct individual egg promotion activities. These programs are funded either by voluntary or mandatory assessments and most tend to be independent of one another and operate on a relatively small scale. However, these programs are eligible for and do receive funds currently from the AEB on a matching fund basis. As a result, their individual programs are enhanced and strengthened. The proposed order also provides for funding for State and regional organizations. A mandatory assessment program as envisioned by the order would ensure consistent and enlarged funding not only on a national basis, but at the State and regional levels as well, through an increased share by eligible States and regions in the total amount collected under the proposed mandatory national program. Promotion and research activities performed by other industries also would benefit from an increased national effort through a cooperative funding provision in the order.

In determining that the egg research, promotion, and consumer education programs under the proposed order will

not have a significant economic impact on a substantial number of small entities, all of the issues discussed above were considered. The order provisions were carefully reviewed and every effort was made to minimize any unnecessary costs or requirements. Although the order would impose some additional costs and requirements on handlers, and possibly some producers, it is anticipated that the research and promotion programs under the proposed order would help to increase demand for eggs and spent fowl and products thereof. Therefore, any additional costs should be offset by the benefits derived from expanded markets and sales benefiting handlers and producers alike.

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) the reporting and recordkeeping provisions that are included in the proposed order will be submitted for approval to the Office of Management and Budget (OMB). They will not become effective prior to OMB approval.

Upon the basis of the evidence introduced at the hearing and the record thereof, the Deputy Administrator Marketing Programs, on October 20, 1986, filed with the Hearing Clerk, United States Department of Agriculture, his recommended decision containing notice of the opportunity to file written exceptions thereto. Exceptions were received from the proponents (industry task force), the Arkansas Poultry Federation; Kraft, Inc.; Cargill Incorporated; New England Brown Egg Council; Carlin W. Hooper; the Biscuit and Cracker Manufacturers' Association; and Super Valu Stores, Inc., and affiliates. A ruling on each exception is contained under the material issue to which the exception relates. The material issues, findings and conclusions, rulings, and general findings of the recommended decision are hereby approved and adopted and set forth in full herein subject to modifications as hereinafter set forth. This decision modifies conclusions in the following material issues:

*Material issue* (1) With respect to an analysis of interregional trade;

*Material issue* (2) With respect to an analysis of the order on social welfare as measured by deadweight loss, and additional points regarding the need for the order;

*Material issue* (3) With respect to—

(a) The definition of the terms "handle" and "eligible organization",

(b) Terms of Board officers,

(c) Funds allocated for research on health issues and new products, State and regional promotion programs, funding and operation of programs for brown eggs, the initial rate of assessment and provisions for one-fourth cent increases, and

(d) Continuance referenda requirements.

### Material Issues

The material issues presented on the record of the hearing are the following:

(1) Whether the marketing of eggs produced in the United States affects the current of interstate or foreign commerce;

(2) Whether a national program for funding research, promotion, and consumer education is needed by the egg industry and whether such program would tend to effectuate the declared policy of the Act;

(3) What the specific terms and provisions of the proposed order should be, including, but not limited to:

(a) The definition of terms used herein which are necessary and incidental to attain the declared policy and objectives of the Act;

(b) The establishment, maintenance, composition, procedures, powers, duties, and operation of the Egg Marketing Board which shall be the local administrative agency for assisting the Secretary in the administration of the order;

(c) The authority for establishing and financing the development and carrying out of programs and projects of advertising, research, consumer education, and promotion directed to improve, maintain, and develop domestic and foreign markets for eggs and spent fowl and their products;

(d) The authority to incur expenses and the procedure to levy assessments on handlers to obtain revenue for paying such expenses;

(e) The establishment of requirements for reporting and recordkeeping; and

(f) Additional terms and conditions as set forth in the Notice of Hearing published in the December 16, 1985, **Federal Register** (50 FR 51344) which are common to all marketing agreements and marketing orders, and certain other terms as set forth in § 994.85 through § 994.87.

### Findings and Conclusions

*(1) Commerce*

Record evidence indicates that egg production occurs in all States and that some regions are deficit-producing while others are surplus-producing. Evidence further shows that eggs move in significant quantities across States lines. Information entered in the record includes a USDA study (*The U.S. Poultry Industry: Changing Economics and Structure*, ERS, U.S.D.A., July, 1983, Floyd Lasley) which provides data regarding the existence of net movements of eggs out of the West North Central, South Atlantic, and Pacific States into the New England, Middle Atlantic, and Mountain States. The South Central and South Atlantic regions both changed from deficit- to surplus-producing regions in the early 1960's. Additional evidence of the changing composition of interregional egg movements is the fact that the West North Central regions's surplus declined by 37 percent between 1970 and 1980. During the same time period the Pacific region's surplus declined by 29 percent and the New England region's deficit declined by 81 percent.

In addition, production and prices in one State or region affect those in other States or regions. There were various publications entered on the record which contain egg price quotations or estimates of egg values, such as USDA's "Egg Market News Report" and "Agricultural Prices" which are widely used by the industry and which facilitate the dissemination of price information across the country. Testimony presented at the hearing indicates that there is a link between egg prices in diverse geographic locations. For example, there appears to be a high correlation among retail egg price fluctuations in the Los Angeles, New York, Atlanta, and Chicago markets.

Record evidence indicates that eggs are sufficiently alike in appearance and quality, so that it is possible for eggs from widely varying locations to compete in the same market. Several producers testified that they often ship eggs to regions other than their own. Record evidence also indicates that eggs are marketed in processed form as well as in the shell, which facilitates transportation between States and regions. Finally, evidence indicates that eggs move into foreign commerce from the United States and that such exported eggs constituted an average of 1.50 percent of total U.S. table egg production over the past 4 years.

Therefore, it is found that the marketing of eggs produced in the United States affects the current of interstate or foreign commerce. Hence, all commercial eggs produced in the United States as defined in this order should be subject to the provisions of this order. While the definition of "United States" in the Notice of Hearing included all 50 States, it has been determined that the proposed order should be applicable to the 48 contiguous States as explained in section (3).

The exception submitted by the Arkansas Poultry Federation (APF) acknowledges that interregional trade exists in the egg market, but contends that producers in different regions would benefit unequally from national advertising expenditures authorized by the Board. This is based on a theoretical economic analysis of interregional trade. The argument is that producers in a surplus-production region (Region A) would not benefit as much as would producers in a deficit-production region (Region B) from an egg promotion campaign initiated by the Board in Region B which resulted in an increase in demand for eggs in Region B. Since assessments would be paid by first handlers, this argument apparently assumes that all producers would also be first handlers and/or that all assessments would be passed directly back to producers.

It is alleged that when demand (and thus, the price of eggs) increases in Region B, Region A would respond with an increased flow of eggs to Region B. However, the per-unit costs of interregional marketing services would allegedly increase with the increased volume of eggs traded. Producers in Region A would therefore receive a smaller increment in price than producers in Region B (assuming that the price of eggs in Region A equals the price of eggs in Region B minus per-unit marketing costs). This would be true because the producers in Region B would not have to absorb an increase in their per-unit marketing costs, as would producers in Region A. That is, producers in Region A would sustain an increase in per-unit interregional marketing costs, along with the increased price, whereas producers in Region B would receive the increased price but not have to bear a cost increase. Therefore, it is alleged that producers in both regions would be paying the same per-dozen assessment for a regional promotion program which would yield greater per-unit increases in profit for producers in Region A than in Region B and that, for this reason the order would be inequitable.

While there was a consensus among all of the economists who testified at the hearing that the egg market is national in scope, that interrelated deficit- and surplus-production regions exist, and that prices in different regions are interdependent, no evidence was presented concerning the per-unit costs of interregional marketing services. The nature of these costs is central to the validity of the APF's argument, i.e., that the costs increase with the volume of eggs marketed. However, there is a lack of record evidence concerning the exact nature of these costs. Marketing operations may vary among firms and, therefore, it is likely that the per-unit costs of interregional marketing services may also vary. While APF assumed that these costs would increase, there could be a decline in such costs with an increasing volume of eggs traded (i.e., economies of scale in marketing), which would favor the producers in Region A relatively more than those in Region B given the example presented by the APF. In addition, as previously stated, it has been determined that the benefits of the proposed order to the egg industry as a whole would outweigh the potential costs. Therefore, APF's argument concerning these is not accepted.

*(2) Need for a Research and Promotion Program*

The egg industry has suffered from a declining demand for its product for more than 20 years despite the existence of voluntary or mandatory research and promotion programs at the national, State, regional, or private levels. These programs have not reversed the downward trend in the demand for eggs. For example, the record evidence shows that the number of eggs used per person decreased from 317 eggs in 1963 to 261 in 1984. In addition, while the nominal price of eggs has increased, the real price (corrected for inflation) has declined. Real prices, in terms of 1984 dollars, decreased from $1.44 per dozen in 1969 to $.81 in 1984 for cartoned eggs delivered to New York retailers.

The record suggests several factors contributing to the decline in demand. Testimony indicates that eggs are recognized as among the most economical, high protein foods available in the supermarkets today and are listed in the meat group of the four basic food groups needed for nutrition. However, the positive nutritional attributes of eggs have been overshadowed in recent years by negative publicity surrounding the relationship of cholesterol and heart disease. This unfavorable publicity is seen as contributing to a loss of confidence by consumers in the nutritional benefits of eggs and accounts, at least in part, for the decline in consumption. Another important factor cited in decreased demand is the egg industry's inability to meet the needs of the population with changing lifestyles by developing new, convenient, low-cost egg products.

The record shows that promotion and research activities can have a positive effect on the demand for eggs as demonstrated by AEB programs authorized by the Egg Research and Consumer Information Act. Promotional activities at the national level are carried out under this program through assessment levied on producers owning over 3,000 laying hens. The assessment rate, established by statute is 5 cents per 30 dozen case of eggs. Total collections for the years 1980–1985 have averaged $7.5 million per year.

Testimony indicated that there is a correlation between levels of expenditures for advertising and promotion and per capita consumption. Exhibits entered into the record indicate that in 1977 and 1978, AEB implemented an aggressive national campaign utilizing television, radio, and national magazine advertising. During this period, per capita consumption of eggs increased from 267 in 1977 to 272 in 1978 and again upward to 278 in 1979. Due in part to inflation and increased costs for media space, however, AEB was unable to maintain the same level of advertising. Testimony indicated that because of this, per capita consumption resumed a downward trend. In 1978, AEB expended approximately $5.5 million on programs of advertising, research, and consumer education. In 1985, not accounting for inflation, AEB expended only $3.7 million for similar programs.

According to evidence submitted at the hearing, AEB has funded nutrition research over the years in an effort to determine the role of eggs in human nutrition. For example, in 1980, grants totaling approximately one-half million dollars were awarded to 17 scientists for research into the relationship between heath and dietary cholesterol. Also in 1980, funds were available for distribution to eight researchers for research into product development, processing techniques and functional performance, institutional uses, and market test applications. In addition, fellowship grants were given to three university students to encourage research in the field of egg product and poultry science research.

By 1983, due to lower net income, AEB was able to fund only one nutrition research grant and three graduate fellowship grants. In 1984 and 1985, some monies were reallocated from the advertising budget in order to fund a cholesterol action program and an egg nutrition center.

Record evidence indicates that although expenditures for research must be considered as long term, such expenditures are needed to establish an adequate program of continuous research to ensure that consumers receive current information on the nutritional value of eggs.

Testimony at the hearing indicated that new product development is the most promising avenue for the egg industry; yet very few egg producers are able to support or engage in significant or successful research and development activities. Because of the public's ever-changing lifestyle geared toward easier-to-prepare food items, it becomes all the more important to respond to this marketing challenge. With the additional funds that may be allocated in this area by the proposed order, new product development has the potential for increasing sales for egg products both domestically and abroad.

The AEB has provided funding to States and regions on a cooperative basis since the program began. Evidence was introduced concerning State and regional egg promotion programs currently in existence and the positive effect of such programs under the present order because State funds are matched by AEB funds for specific projects. In addition, the national, regional, and State programs complement each other through the distribution given by States of materials developed by AEB. Several representatives of State and regional promotion organizations testified in support of the proposed national research and promotion program. Those representatives testified as to the need for effective State and regional programs which would support a national effort. They specifically supported the proposed order provision which would provide that 15 percent of monies collected, less administrative expenses, would be allocated back to State and regional programs on a proportionate basis.

Under the AEB program, producers are eligible to receive refunds. The percentage of monies collected which are refunded has increased in the past several years, up to 43 percent at the end of 1985. The record contains some discussion about the mandatory requirement for paying assessments under the order as compared with the voluntary AEB program. Several witnesses referred to the "free rider syndrome" in the AEB program; i.e., producers who request refunds are receiving the same benefits of advertising, research, and promotion programs as are the producers who do not refund, creating an inequity in cost/benefits. These witnesses who were primarily producers testified in support of the proposed order provisions in which no refunds of assessments would be authorized. Therefore, sufficient funding would be available for these programs.

Concerns of opponents to the research and promotion program came primarily from food manufacturers and other users of eggs in further processed products who voiced no objection to the egg industry promoting "table grade eggs," but argued that they are better equipped and more knowledgeable themselves in promoting egg products and developing products using eggs. They asserted that assessments would be passed on to processors and on to consumers in increased prices for their products. However, there was no evidence indicating the extent to which this pass forward might occur. Exceptions filed by seven representatives of Super Valu Stores, Inc., and their affiliates contend that the assessments on first egg handlers would increase the cost of eggs to retail customers. The Biscuit and Cracker Manufacturers' Association in their exception also contend that the costs of administering the proposed order's programs will be passed on to the consumer. As previously discussed, there was some testimony with regard to the possible increased costs of eggs purchased by food manufacturers because of the assessment, assuming that all or a portion of the assessments would be passed forward to processors from first handlers. However, the extent to which this might occur was not clear in the record, nor was it specified in testimony that if this did occur whether the cost to consumers of food manufacturers' products would increase. The exceptions filed regarding this issue also were not specific with respect to the extent costs to consumers would increase as a result of the proposed assessments on egg handlers. In any event, it has been determined that the potential benefits of the proposed order, including consumer education, nutritional information and new-product research and development, would outweigh any potential increased costs. Therefore, the exception is denied. Other opponents, including producers, pointed out that voluntary, individual brand promotions are most effective, citing as an example the success of the broiler industry in developing and promoting their products. However, the evidence did not indicate whether a majority of egg producers had the ability to engage in such individual promotion or new product programs at the individual firm level or that such efforts would have an impact on national consumption. Further, record evidence shows that generic promotion is designed to increase aggregate demand, so the entire industry would benefit and, in fact, some research shows that generic and brand promotions complement each other.

Evidence indicates that there is a great potential for increasing consumption for eggs, spent fowl, and products thereof through the proposed research and promotion program. Further, there was no indication in the testimony or briefs filed that the proposed program would be in conflict with the *Dietary Guidelines for Americans*, U.S. Department of Agriculture/U.S. Department of Health and Human Services, Home and Garden Bulletin No. 232, Second Edition, 1985. Research activities authorized under the order would provide consumers with up-to-date information regarding the nutritional attributes of eggs. In addition, expansion of markets and the development of new products would be beneficial to the future of the egg industry.

The Arkansas Poultry Federation presented as part of its exception to the egg marketing order an economic analysis of the effects of the order on social welfare as measured by deadweight loss. The analysis states that a deadweight loss is "roughly equal to the amount of the assessment times the quantity of eggs consumed prior to the implementation of the assessment." Underlying this statement are unsupported assumptions about the degree to which the demand curve will shift in response to the programs which would be implemented under the order provisions. In addition, the deadweight loss is represented as the entire amount collected in assessments. However, the deadweight loss is theoretically an efficiency loss which is caused by a short-run reduction in the volume of trade which occurs when, all other things equal, the resources which would have been spent on egg production and consumption are instead spent on the assessments and as a result, fewer eggs are traded. Thus, the amount of the deadweight loss depends on the initial amount of reduction in egg production resulting from the implementation of the assessment (which in effect moves the supply curve to the left), as well as on the slopes of the demand and supply curves. However, if a measurable deadweight loss does in fact occur, it is anticipated that the assessment called for by the order would not significantly reduce the quantity of eggs traded and that, therefore, the amount of the deadweight loss in dollar terms would be small. And, after the programs provided for in the order are implemented, it is anticipated that there will be a net increase in the quantity of

eggs traded and that any deadweight loss will be offset.

It has been determined that although the order would impose some additional costs and requirements on handlers, and possibly some producers, the research and promotion programs under the proposed order would help to increase demand for eggs and spent fowl and products thereof. Therefore, any additional costs (including any deadweight loss) should be offset by the benefits derived from expanded markets and sales benefiting handlers and producers alike.

There was evidence that funds to finance advertising, research, consumer information, and promotion programs must be obtained by the egg industry through a structure such as contained in the proposed order to assure mandatory industry-wide participation and sufficient income on a regular basis to finance these programs.

The APF's exception includes the argument that the record failed to establish the need for the proposed order and that the proposal does not promote orderly marketing. The exception cites the demise of the British Egg Authority as an example of a promotion program that had not worked. APF also argued that private and regional promotions and product development efforts were more successful than any demonstrated national program, citing three examples.

The concerns raised in APF's exception regarding need for the program were fully considered in reaching a recommended decision. The record evidence did not indicate that a majority of egg producers had the ability to engage in individual promotion or new product programs at the individual firm level or that regional promotional efforts would be more successful than a national effort. A review of the evidence regarding the British Egg Authority program fails to illustrate whether any other factors contributed to the reported decline in per capita consumption of 23 eggs per person per year during its tenure, such as prices, production controls, and the state of the economy in general. The benefits of the proposed order would encompass nutrition research, consumer education and the research and development of new products, as well as advertising, which was the main focus of the British program. The proposed marketing agreement and order and all the terms and conditions thereof, as hereinafter set forth, will tend to effectuate the declared policy of the Act. APF's arguments are therefore denied.

Therefore, it is concluded that the record evidence supports the need for the research, promotion, and consumer education programs for eggs and spent fowl and products thereof and that the order would effectuate the declared policy of the Act.

*(3) Specific Terms and Provisions of the Order*

Certain terms are used frequently throughout the order. These terms are defined as follows to clearly delineate their meaning and to simplify the subsequent provisions in which they are used:

(a) "Secretary" should be defined to mean the Secretary of Agriculture of the United States or any other officer or employee of the United States Department of Agriculture who is authorized to act for the Secretary with respect to administration of this order. The definition has been modified from that contained in the Notice of Hearing. This change is nonsubstantive and is made to simplify the language of the definition.

"Act" should be defined to provide the correct statutory citation for the Agricultural Marketing Agreement Act of 1937, as amended. This is the statute under which the proposed regulatory program is to be operative and avoids the need for referring to the citation throughout the order.

The term "Egg Marketing Board" should be synonymous with "Board" and should be defined to identify the administrative agency established under the provisions of the order. The Board is authorized by the Act and the term "Board" is used throughout the order to avoid the necessity of repeating the Board's full name each time it is used. The reference to § 994.35 has been deleted from the proposed order in the Notice of Hearing to eliminate unnecessary cross referencing in the order language.

"Fiscal period" should be defined as the calendar year or other 12-month period that may be recommended by the Board and approved by the Secretary. This would provide sufficient flexibility to authorize the Board, with approval of the Secretary, to set the beginning of the fiscal period on the date most practicable and appropriate.

The definition of "person" should be defined in the order to mean any individual, partnership, corporation, association, or any other business unit. This definition conforms with the definition set forth in the Act.

"Producer" should be defined in the order to identify the person owning hens who is engaged in the production of commercial eggs from such hens. A person owning less than 10,000 laying hens would not be a producer under the order. In addition, producers are the persons, as defined in § 994.5, who will be eligible to vote in any referendum on the order and will be eligible to serve on the Board. The term also references the eggs which will be subject to assessment under § 994.61.

Testimony presented at the hearing raised concerns as to how the definition of producer would be applied to those persons who should properly be determined to be producers under the order. Because of the varied commercial relationships entered into by persons who are involved in the production of eggs, it was noted that there could be difficulties in identifying whether one or more persons would be a producer under the order.

The proposed definition of producer is any person who is engaged in the production of commercial eggs and owns 10,000 or more laying hens. Person would be defined as any individual, partnership, corporation, association, or any other business unit.

Determining who is a producer under the order is of importance not only for voting in referenda but also, under § 994.61 of the order, assessments are made on each dozen eggs handled which are produced by producers. In addition, there was testimony which suggested that contract producers should be included in the definition of producer and that all independent producers who own hens and have housing facilities should be excluded from the definition of producer in the order.

While commercial relationships in the egg production industry may be varied and examples of such relationships are numerous, the record evidence confirms that in any possible commercial relationship, the person involved in the production of eggs and who owns the laying hens, regardless of whether an individual, partnership, association, corporation, or other business unit should be defined in the order as a "person" and should be considered as one producer.

In some instances, owners of hens enter into agreements with persons who own facilities and who agree to house and feed the hens for a fixed fee and/or other arrangement. Those persons who own the facilities are known in the industry as contract producers. Record evidence indicates that the contract relationships between such persons are diverse. Testimony indicates that there is no verifiable data with regard to the number of contract producers or the percent of total production represented by contract production. Therefore, the definition of producer should be defined in such a manner as to clearly identify

who is a producer. It is clear from testimony that the intent of this definition is to include only those persons who own laying hens. As defined, a producer must own the hens in order to be engaged in the production of eggs. When applied to a contract producer relationship, the person owning the hens would be a producer and not the person who owns the facilities. Accordingly, the recommendation made at the hearing to include contract producers in the definition of producer does not have merit and, therefore, the definition of producer is not so changed.

Persons who are engaged in the production of commercial eggs and also own less than 10,000 laying hens would not be a "producer" under the order. The definition of producer should be defined so that these small producers would not be directly impacted by the proposed order and, accordingly, handlers would not be subject to assessment in handling these producers' eggs. This exemption could insulate approximately 549 small producers currently paying assessments to AEB and who own laying hens in the 3,001 to 10,000 range from any potential impact of the order. Evidence indicates that commercial egg production from producers with less than 10,000 hens represents a very small proportion of national production. Even if first handlers were subject to assessment for these producers' eggs, their assessments would not be a significant amount. However, the program costs and the paperwork involved in the collection of these assessments and verification from large numbers of individual transactions would not make the inclusion of these producers in the definition of producer cost effective. On the other hand, the recommendation to exclude all independent producers from the definition of producer would have the opposite impact in the order. Egg production by independent producers owning 10,000 or more laying hens represents such a significant amount of egg production that to exclude them from the definition of producer and not subject their production to assessments would deplete funds available for programs and projects to such an extent as to render the national research and promotion program ineffective. Accordingly, the recommendation made at the hearing to exclude all independent producers from the definition of producer does not have merit and the definition of producer is not modified to include such a change.

Mr. Carlin Hooper's exception was generally opposed to the proposed order, but was specific with respect to his contention that a producer covered by the order and thus eligible to vote in any referendum should be defined as "An egg farmer (producer) whose total gross income is more than 51–80 percent from self farm raised or grown, raw, ungraded, and unprocessed production." His exception acknowledges that no record evidence supported this view. Section 8(c)(8) of the Act requires that a referendum must be based on number of producers voting or volume of production represented in the voting. The data needed to verify the status of individual producers, as defined in the proposed order, is obtainable by USDA. Egg production statistics also are available for verification purposes. Other data on individual farm income necessary to determine the percentage of revenue derived from egg production is not readily available to USDA. Therefore, Mr. Hooper's recommendation would not be possible to adopt for purposes of a referendum or otherwise. Moreover, as stated earlier, record evidence supports the definition of a producer to mean "any person who is engaged in the production of commercial eggs and owns 10,000 or more laying hens." For the reasons stated above, the exception is denied.

The term "handle" should be defined to include the functions performed by the persons to be regulated under the order. These functions include processing, grading, cartoning, or purchasing eggs or placing eggs in the current of commerce except as a common carrier of eggs owned by another person. However, to differentiate between the functions of handling and producing, the definition excludes certain activities which are customarily producer functions, such as washing, packing of eggs, or a producer's delivery of his/her own nest run eggs.

In their exception, the proponents recommend changing the definition of "handling" in § 994.7 so that buyers and sellers of nest run eggs would not be required to pay assessments. Under the present definition of "handle", producers would not be required to pay assessments on the sale of their own nest run eggs. However, the first buyer of nest run eggs would be classified as a "handler" and would be required to pay the assessment. The intent of the present definition is to exclude from assessment those eggs which are produced and sold by producers on a nest-run basis. The person or firm performing the first processing or marketing function after the nest run stage would be responsible for paying the assessment.

This change in the definition of "handle" would mean that eggs would not be assessed as long as they were not processed beyond the nest run stage in any form, no matter how many times ownership of them changed. According to the proponents, it would be easier for a buyer of nest run eggs to determine whether or not they had already been assessed. The buyer would know that the assessment had not been paid if he/she purchased nest run eggs, and that if the nest run eggs are sold without further processing, then he/she would not be required to pay the assessment. The proponents contend that this would aid purchasers of nest run eggs in avoiding confusion concerning who should pay the assessment.

Under the American Egg Board's present system, if nest run eggs are sold by a producer, the assessment is paid by the purchaser of the eggs, regardless of the function performed by said purchaser. In this case, the act of the first purchase of nest run eggs determines who pays the assessment. According to the proponents' exception, a problem arises only when there is some question as to whether the assessment has been paid, or should be paid, by the first buyer of nest run eggs. However, although the exception was considered in the development of the final decision, testimony indicates that this is not a significant problem because the current AEB system is quite effective regarding the collection of assessments.

The proponents did not clearly show the need for the proposed change in the definition of handle. Therefore, the exception is denied and the definition of "handle" shall remain unchanged in the order.

"Handler" should be defined in the order to identify the persons who would be subject to certain recordkeeping requirements provided by the Board, and who would have the responsibility for paying the assessments as a first handler and who would be eligible to serve as a member or alternate on the Board. Those persons performing producer functions only would not be considered handlers under the order. However, in those cases where producers are also functioning as handlers, such persons would be handlers under the order to the extent that they were engaged in the handling of eggs. It is recognized that some large users of eggs in food products would be handlers under this definition. During the hearing, the question was raised as to whether processors and purchasers of graded eggs, such as bakers, mayonnaise manufacturers, and food service companies, would qualify as

handlers and thus be eligible to serve on the Board, even though they were not "first handlers" required to pay the assessment. The testimony was not conclusive with respect to this issue. Nor was the number or identity of persons who would not be regulated under the order as "first handlers" made clear. Nonetheless, the brief filed by the proponents after the hearing suggested that handlers other than first handlers could serve on the Board. The American Bakers Association opposed the order and, in their brief filed after the hearing recommended that if the order were approved, users of eggs should be eligible to serve on the Board regardless of whether they were "first handlers."

Handlers who are not "first handlers" subject to the assessment of the order may be represented on the Board provided they are nominated by a certified organization which has met the criteria required for certification in § 994.70 and, therefore, no change in the order language is necessary.

Testimony indicates that there should be a system to verify first handler status so that eggs would be assessed only once. It was pointed out that AEB presently has the ability to identify first handlers through a computerized collection system utilized for the present order. In addition, AEB presently has the ability to identify those producers owning 3,001–10,000 hens so that eggs produced from such producers would not be subject to assessment. Accordingly, it is determined that the Board would be capable of identifying first handlers.

The term "hatching eggs" or "eggs" should be defined as eggs intended for the use by egg hatcheries for the production of baby chicks. Hatching eggs would not be subject to assessments under the order. These eggs are not sold as commercial eggs for human consumption either in shell form or in further processed form. Only commercial eggs are subject to assessments. However, if hatching eggs are at any time sold as commercial eggs, as defined in § 994.11 they would be assessed as any other commercial eggs covered by the order.

The term "hen or laying hen" was defined in the Notice of Hearing to identify domesticated female chickens which are raised primarily for the production of commercial eggs. A discussion ensued during the hearing as to whether the definition should be tied to a specific age; i.e., 18 weeks as specified in the proposal. It was pointed out that 15 years ago the industry identified a laying hen as one at least 22 to 24 weeks old. Since that time, the trend has been toward younger laying hens. The definition, therefore, has been modified in § 994.10 to exclude any reference to age and refers instead to a sexually mature female domesticated chicken raised primarily for the production of commercial eggs.

The term "commercial eggs" or "eggs" should be synonymous and should be defined as eggs subject to assessment under § 994.61. It is clear from record evidence that the intent of the order is to assess only those eggs that are commercially produced from domesticated chickens in the United States and which are sold for human consumption either as eggs or further processed eggs into dried, frozen, or liquid eggs. Record evidence indicates, however, that there are certain eggs produced in the United States which are not intended for human consumption. These eggs were identified in testimony as eggs from primary broiler-breeder flocks or broiler-breeder flocks. Therefore, the definition should exclude these eggs from the term "commercial eggs."

The definition of "egg product" should be defined to mean any dried, frozen or liquid eggs, with or without added ingredients, excepting products which contain eggs only in relatively small proportion or historically have not been, in the judgment of the Secretary, considered by consumers as products of the egg food industry. The definition of "egg products" corresponds with the definition as it appears in the Egg Products Inspection Act (21 U.S.C. 1031 through 1056).

"Spent fowl" should be defined to mean those hens that have been in production of commercial eggs but which have been removed from production for slaughter.

"Products of spent fowl" should be defined to mean those commercial products which are produced from spent fowl.

The definition "United States" which was contained in the Notice of Hearing included all 50 States of the United States. The Hawaii Department of Agriculture expressed strong opposition to inclusion of that State in the proposed order. Also, it was noted that separate legislative authorities, such as the Egg Research and Consumer Information Act, do not include Alaska and Hawaii. Record evidence confirms that commercial egg production is a part of the economy of all 50 States. However, substantial evidence indicates that Alaska and Hawaii should not be included in the proposed order. According to Poultry Production and Value: 1985 Summary, USDA, SRS, April 1986, Hawaii's share of national egg production was only 0.32 percent of total egg production in the United States, while Alaska's share was only 0.02 percent. Record evidence shows that neither State ships eggs into interstate or foreign commerce, hence, eggs produced in each State are consumed entirely in each respective State. Although some eggs are shipped from the mainland, primarily from the western area, to Alaska and Hawaii, the amount is not considered significant. The exclusion of Hawaii and Alaska in the proposed order would not have a detrimental effect on the operation of the order. Therefore, it is found that the 48 contiguous States represent the smallest regional production area that is practicable and consistent with carrying out the declared policy of the Act and that the issuance of several orders would not effectively carry out the declared policy of the Act.

The term "marketing" should be defined as the sale or disposition of commercial eggs, spent fowl, or their products. For eggs, this term would include all of the activities that occur from the time they are produced until they or their products are sold to the ultimate consumer.

The term "promotion" should be defined as any action authorized by the Board to enhance the image, acceptability, or desirability of eggs or spent fowl or their products. Testimony noted that the term would include, among others, sales promotion, merchandising, publicity, consumer education, market research, or any other related activities. Although the term was defined in the Notice of Hearing to include paid advertising for eggs, egg products, spent fowl, and products of spent fowl, this definition is modified to limit paid advertising to eggs and egg products as authorized by the Act. Section 608c(6)(I) of the Act authorizes paid advertising for eggs and egg products and not spent fowl or products thereof. The record includes evidence that, with respect to paid advertising, funding should be permitted only for generic advertising except in cases of cooperative advertising whereby eggs or their products combine with a compatible generic or branded product to share the advertising message and cost. Sections 994.50(b) and 994.52(b)(3) provide for such generic advertising.

"Research" should be defined to include all types of research which would enhance the image, acceptability, or desirability of eggs or spent fowl or their products. Testimony indicated that an important component of this term is nutrition research; however, other types of research could include activities normally associated with promotional or marketing programs, product research,

marketing research, packaging research, and consumer opinion attitude research.

The definition of "consumer education" should be defined to mean any activity which would communicate information about eggs to consumers. Testimony indicated that such activities could include the development of recipe or nutrition information brochures which are important in the overall promotion of eggs to consumers.

"Eligible organization" should be defined to identify those organizations which would be eligible to nominate producers and handlers to the Board. The term includes any organization, association, or corporation which represents egg producers and/or handlers of any egg producing area of the United States and certified by the Secretary pursuant to § 994.70. In its exception, APF would narrow the definition of "eligible organization" so that the primary activity of such organization relates to eggs and not other agricultural activities. Section 994.70 of the proposed order gives the Secretary the authority to certify organizations and provides specific criteria which he/she must consider in this determination. If an organization meets this criteria and can show that its membership is composed of a substantial number of egg producers or handlers who produce and/or handle a substantial volume of commercial eggs in the applicable area, then such organization would be certified regardless of any other agricultural activity in which it may engage. The criteria set forth in the order establish a reasonable basis for the Secretary to determine equitable representation of the egg industry within each of the geographic areas. Similar criteria have proven to be effective in selecting members to the American Egg Board. Therefore, the exception is denied.

(b) Record evidence shows that an administrative agency, to be known as the Egg Marketing Board, should be established to administer the order. In the Notice of Hearing, § 994.35 through § 994.45 covered the establishment, maintenance, composition, procedures, powers, duties and operation of the Board. The need for these provisions is supported by record evidence. The Notice of Hearing provided that the Board would be composed of 21 producer and handler members and 21 alternates. Three of the 21 members were designated as at-large producer and handler members on the Board. The Agricultural Marketing Service proposed in the Notice of Hearing that one of the three at-large positions be designated for a public member to represent consumer interests. The addition of a public member was adopted by the proponents at the hearing. However, in order to retain the three at-large positions on the Board, the proponents proposed at the hearing that an increase be made in total Board membership to 22 members and 22 alternates. The Board's composition, therefore, would include 18 producer and handler members and 18 alternates who would be nominated by certified organizations and appointed by the Secretary in accordance with § 994.37. In addition, three at-large producer and handler members and their alternates would be appointed by the Secretary from nominations submitted by the Board, as prescribed in § 994.37(f) of the proposed order. A public member and alternate should be appointed by the Secretary from nominations submitted by the Board or at his discretion. The proponents also proposed at the hearing that the order be amended to provide that at-large members be nominated by the Board in such a manner as to consider any representation imbalances, particularly relating to size, that might occur. These modifications have merit. Accordingly, §§ 994.35 and 994.38 have been amended to include these modifications. Also, miscellaneous, non-substantive changes have been made to section 994.35 through 994.38 and sections 994.41 and 994.43 for consistency and simplicity of order language.

The terms of office for Board members and their alternates should be for terms of 3 years. A 3-year term would provide Board members sufficient time to develop their expertise and apply their talents to the maximum benefit of the Board. The initial terms for producer and handler members and their alternates, including at-large positions, should be staggered to avoid the Board members' terms expiring at the same time. To accomplish this, the initial appointments for the 21 producer and handler members and alternates should be for seven members to a 3-year term, seven members to a 2-year term, and seven members to a 1-year term. Testimony indicated that the public member's initial term should be 2 years and such provision has been added to § 994.36 of the order.

Nominations for the 18 producer and handler Board members representing each of the six geographic areas as specified in the order should be submitted to the Secretary by eligible organizations or, if the Secretary determines that a substantial number of producers or handlers are not members of an eligible organization or that their interests are not represented, then from nominations made by producers and handlers in the manner authorized by the Secretary.

Where there is more than one eligible organization, association, or cooperative within each geographic area, they may caucus for the purpose of jointly nominating two qualified persons for each member and for each alternate member to be appointed. If joint agreement is not reached with respect to any nominations, or if no caucus is held within a defined geographic area, each eligible organization, association, or cooperative may submit to the Secretary a nomination for each appointment to be made.

For the initial Board, nominations for the 18 producer and handler members should be submitted by eligible organizations to the Secretary within 60 days following approval of the order by referendum. Section 994.37 in the Notice of Hearing provided for a 30-day period of time for this process. However, it is determined that a 30-day period of time is not reasonable for the Department to review and approve requests for certification of organizations under § 994.70 and for the submission of nominations by these organizations as provided in § 994.37(a). Therefore, a time period of 60 days is included in § 994.37(a).

Upon appointment of the initial 18 Board members representing the six geographic areas these Board members should nominate and submit to the Secretary for approval the initial appointment of three additional producer and handler members of the Board representing at-large positions on the Board and their alternates for such positions. As discussed previously, in making nominations for these three at-large positions, the Board, to the extent practicable, should consider representative composition of the Board appointments already made, particularly the size of members already appointed. While no time period is specified in the order for these initial nominations for at-large positions, it is anticipated that the Board's nominations will be submitted to the Secretary as soon as practicable.

Following establishment of the initial Board, nominations for subsequent Board members and alternates, including the at-large positions, should be submitted to the Secretary not less than 60 days prior to the expiration of the term of members and alternates previously appointed to the Board.

Testimony indicated that the Board members and alternates should not serve more than two consecutive 3-year

terms. Renewal of a Board member's or alternate's term of office may be in the best interests of the industry in some situations; however, limiting members to not more than two consecutive 3-year terms would assure the industry of a broader mix of leadership and ideas. Nonetheless, it should be possible, after serving two consecutive 3-year terms, for Board members to serve as alternates or alternates to serve as members. Testimony at the hearing also indicated that members and alternates appointed for initial terms of less than 3 years would not be prohibited from serving two 3-year consecutive terms.

Representation on the Board for the 18 members who are not at large members or who do not represent the public should be on a geographic basis. Testimony indicated that the geographic areas should duplicate the current designation of areas and production percentages currently in effect for the AEB. The designated geographic areas, therefore, should provide approximate representation on the Board on the basis of proportion of eggs produced in those areas to the total U.S. egg production, excluding Alaska and Hawaii. This is reflected in the latest analysis conducted by the AEB and the Department in 1984.

Based on record evidence, the order should specify in § 994.37(d) six geographic areas composed of the various States as follows:

Area 1 (North Atlantic States) consisting of Vermont, New Hampshire, Maine, Massachusetts, Connecticut, Rhode Island, New York, Pennsylvania, New Jersey, Delaware, Maryland, and the District of Columbia; Area 2 (South Atlantic States) consisting of Virginia, West Virginia, North Carolina, South Carolina, Georgia, and Florida; Area 3 (East North Central States) Ohio, Indiana, Illinois, Michigan, and Wisconsin; Area 4 (West North Central States) Minnesota, Iowa, Missouri, North Dakota, South Dakota, Nebraska, and Kansas; Area 5 (South Central States) Kentucky, Tennessee, Alabama, Mississippi, Arkansas, Louisiana, Oklahoma, and Texas; and Area 6 (Western States) Montana, Wyoming, Colorado, New Mexico, Arizona, Utah, Nevada, Idaho, Washington, Oregon, and California.

The States of Alaska and Hawaii were included in geographic area 6 in the Notice of Hearing. However, these States are not included in the proposed order as stated earlier in this document. The exclusion of Alaska and Hawaii does not otherwise affect the geographic area determination or the number of members and alternates to be appointed in any of the six geographic areas.

The order should provide for the following number of members of the Board and an equal number of alternate members: North Atlantic-3, South Atlantic-3, East North Central-3, West North Central-2, South Central-3, and Western-4. This distribution is reflective of the following approximate percentages of total U.S. egg production in each area: North Atlantic-17 percent, South Atlantic-17 percent, East North Central-17 percent, West North Central-12 percent, South Central-18 percent, and Western-19 percent.

In view of past and potential future shifts of egg production from State to State and between areas, the order should provide for a mandatory review by the Board, at least 5 years, of egg production by geographic area to determine (1) whether the areas should be redefined, and (2) whether the number of Board members and their alternates needs changing so that representation is as balanced as is practicable. The number of members for each area should be determined by dividing the total volume of eggs produced in the United States for the calendar year previous to the date of review by 18, which provides a factor of volume of eggs per member and then dividing the total volume of eggs for each area by such factor. Any reapportionment of geographic areas or modification of membership resulting from such review should be submitted to the Secretary for approval.

Testimony indicated that persons selected by the Secretary as Board members and alternates should file a written acceptance promptly after being notified of their selection. Such acceptance should reflect an agreement to (1) participate actively on the Board, (2) disclose any position held in any organization that has a contractual relationship with the Board, and (3) withdraw from voting on matters before the Board where such membership as an officer or board member capacity is in any organization which proposes to contract with the Board. However, members who are not officers or board members of nonprofit industry organization should be permitted to vote. Testimony emphasized the importance of obtaining preliminary assurances from prospective candidates, through the nomination process, that they would be willing to accept the terms of the agreement to serve on the Board, which is reflected in § 994.38 regarding a nominee's agreement to serve on the Board.

The procedure for conducting meetings of the Board should conform with the by-laws to be adopted by the Board. However, such matters as the method of voting and quorum requirements should be set forth in the order.

The order should provide that any action taken by the Board require the concurrence of a majority of the votes cast. Fifteen members of the Board should constitute a quorum at any assembled meeting of the Board, and any action of the Board should require the concurring votes of at least eight members. The Notice of Hearing provided in § 994.39(a) that 11 members would be necessary for a quorum. Proponents proposed the change from 11 to 15 at the hearing in the interest of requiring a larger representation for Board meetings. This change has merit and is incorporated into the order.

At any assembled meeting, all votes should be cast in person. The Board should be authorized, however, to vote by telephone, telegraph, or other means of communication for expediency. Any vote cast by telephone should be confirmed promptly in writing to provide a written record of such votes.

In the event a vacancy occurs, due to death, removal, resignation, or disqualification of any producer or handler member or alternate member, a successor should be appointed from the most recent list of nominations from the geographic area concerned. If necessary, nominations could also be made in accordance with the procedures established in the order for original nominations. Section 994.40 is modified to clarify the nomination procedure when a vacancy occurs for members and alternates representing the six geographic areas, the at-large positions, and the public. A public member or alternate vacancy should be filled from nominations submitted by the Board or by the Secretary at his discretion. It should be unnecessary to fill any unexpired term for any member or alternate of 6 months or less.

The order should provide that an alternate member shall be selected for each member of the Board. Each alternate selected should have the same qualifications for membership as the member. There could be occasions when a Board member is unable to attend a meeting or meetings. Moreover, in the event of death, removal, resignation, or disqualification of a member, the alternate should act until a new member is nominated and selected by the Secretary.

The order should provide that no member of the Board, or any alternate, shall be held personally responsible, either individually or jointly with others, in any way whatsoever to any person for errors in judgment, mistakes, or other

acts, either of commission or omission, of such member or alternate in performance of his/her duties, except for acts of willful misconduct, gross negligence, or those which are criminal in nature.

The order should provide that Board members, and alternates when acting as members, shall be reimbursed for out-of-pocket expenses necessarily incurred in the performance of their duties. Record evidence supported a further provision for the establishment of compensation at a rate to be determined by the Board and approved by the Secretary. Testimony indicated that a specific rate should not be included in the order so that any changes in the rate could be made by the Board and approved by the Secretary without the need for a referendum. The order should also permit actual expenses and compensation where specifically authorized for alternates, notwithstanding that the Board members for whom they serve as alternates also attend meetings.

The Board should be given those specific powers which are set forth in section 608c(7)(C) of the Act. Such powers are necessary to enable an administrative agency of this character to function properly under the order. Thus, the Board is given the power to administer the order; to issue rules and regulations to effectuate the order; to investigate and report violations; and to recommend amendments to the order.

The Board's duties, as set forth in the order, are necessary for the discharge of its responsibilities. These duties are generally similar to those specified for administrative agencies under other programs of this nature, the necessity of which is supported by record evidence. The Board should meet and organize and select from among its members a chairman and such officers as may be necessary. The recommended decision stated that testimony from proponents strongly recommended that terms of Board officers should not exceed 1 year and should be limited to two consecutive terms in the same office. A further statement was made that although the order language was not modified by proponents in this regard, such provision would be appropriate for inclusion in the by-laws of the Board. Proponents took exception to this statement citing that it presupposes the appropriateness of one-year terms and restrictions on consecutive terms of Board officers. The statement has its basis in testimony and was intended only as a point of consideration for the Board in developing procedures. Therefore, no modification is required.

The Board should adopt such rules and bylaws with the approval of the Secretary, for its conduct as it may deem advisable. The Board also should be authorized to appoint such committees and subcommittees from Board membership, as necessary, and appoint individual consultants or groups of knowledgeable persons who can provide special expertise to the Board in administering its programs.

The Board should serve as intermediary between any concerned parties and the Secretary, thus alleviating the necessity for involvement of the Secretary in issues more appropriately resolved at the Board level. However, any unresolved issues should be reported to the Secretary.

The Board should keep minutes, books, and records which will clearly reflect all of its acts and transactions. Upon request, the Board should provide information to the Secretary from such documents. In addition, the Board should give the same notice of meetings of the Board and committees to the Secretary as is given to members so that representatives of the Secretary may attend such meetings. These provisions are necessary so that the Secretary is able to perform oversight responsibilities.

Since day-to-day activities of the Board cannot be performed by Board members, another duty of the Board should be to employ such persons as the Board deems necessary and to determine the compensation and define the duties of each. The Board should also take steps to protect the handling of Board funds through fidelity bonds.

The Board must maintain records of its activities and disbursement of funds. Accordingly, it should maintain books and records and prepare and submit to the Secretary such reports from time to time as may be required for appropriate accounting with respect to the receipt and disbursement of funds entrusted to the Board.

To enable the Board and all persons paying assessments to plan accordingly, the Board should prepare and submit to the Secretary for approval a budget on a fiscal year basis of its anticipated expenses in the administration of the order, including probable costs of all programs or projects. The Board must delay funding any project until adequate funds have been collected. However, the Board should begin as soon as practicable to develop programs and projects and enter into contracts or agreements with national, regional, or State egg organizations or other organizations or other entities, as appropriate. Such contracts or agreements would be subject to the approval of the Secretary, and would provide for the development and execution of programs or projects of research, product development, advertising, promotion, or education, and the payment of the cost thereof with funds collected pursuant to the order. The Board should further establish procedures under which such proposals may be submitted, including submission of projects together with budgets showing estimated costs, and the right of the Secretary or employees of the Board to audit the records of the contracting party. Notwithstanding the Board's authority to enter into contractual arrangements with other entities, the Board should be authorized to recommend to the Secretary plans and projects developed on its own initiative.

To provide an accounting of funds received and spent, the Board should cause its books to be audited by a certified public accountant at the end of each fiscal period and submit a copy of each audit to the Secretary. A copy should also be made available at the principal office of the Board for inspection by producers and/or handlers. However, it is determined that information of a confidential nature should be removed from the report, and § 994.45(h) of the order is changed accordingly.

With the approval of the Secretary, the Board should invest, pending disbursement pursuant to a plan or project, funds collected through assessments pursuant to §994.61 in obligations of the United States Government or any agency thereof, in any interest-bearing account or certificate of deposit of a bank that is a member of the Federal Reserve System, or in obligations fully guaranteed as to principal and interest by the United States Government; and should receive and evaluate, or, on its own initiative, develop and budget for plans or projects to promote the use and consumption of eggs, egg products, spent fowl, or products of spent fowl, as well as projects for egg research and consumer education and to make recommendations to the Secretary regarding such proposals. Section 994.45(k) has been modified to specify that late payment charges provided in § 994.64 may also be invested as well as assessments.

Testimony at the hearing indicated that as part of the communication program to keep egg producers, handlers, and the public properly advised, the Board should make at least an annual report available of the

activities carried out and provide an accounting of funds received and expended. This provision has merit and is consistent with provisions in other orders. Accordingly, a new paragraph (m) has been added to § 994.45.

(c) The Board should have the authority to determine the type of advertising, research, consumer education, and promotion activities to be undertaken and it should have the responsibility for initiating and recommending to the Secretary the establishment of any plans or projects authorized under the Act for eggs, egg products, spent fowl, or products thereof. These provisions appear in § 994.50 and are supported by record evidence. Such plans or projects could include, among others, developing existing and new markets and expanding markets outside the United States as well as developing new uses for eggs, spent fowl, and their products. Since it is not possible to anticipate all the promotion, research, and consumer information activities that may be needed, the authority should be broad and flexible to enable the Board to use the most efficient and effective methods of carrying out its objectives. The Board may develop programs and projects on its own initiative or contract with other organizations with approval of the Secretary.

No advertising or promotion program shall use false or unwarranted claims or use unfair or deceptive acts or practices regarding competing products. The record evidence is clear that only generic promotion and advertising will be permitted since this would be a national program of benefit to all producers and handlers. However, as stated previously, cooperative advertising could be permitted whereby eggs or egg products, combine with a compatible generic or brand product other than eggs or egg products to share the advertising message and cost.

Testimony at the hearing was that a provision should be included in the order for a periodic evaluation of the promotion programs implemented under the authority of the order. It was pointed out that such evaluation would benefit the Board and protect the interests of egg handlers and producers as well as the public. This recommendation has merit and, accordingly has been added as paragraph (c) to § 994.50 to provide that an evaluation shall be arranged and funded by the Board at least once every 3 years. Additionally, § 994.50 has been reformatted for consistency with other sections of the order.

The record evidence supports the need for funding for research projects involving diet and health issues and development of new products and new uses. To assure that funds would be available for these two programs, the order should set minimum percentages of 5 percent of assessments collected for each program, less projected expenses. Although there was some concern expressed at the hearing that the minimum percentages would be interpreted as maximums, the record indicates that there is strong support for funding at levels above 5 percent. Subject to approval of the Secretary, the Board should have the discretion to increase that amount.

In its exception, APF contends that the proponents wanted to obligate only 10 percent of assessments, less Board expenses, to health issues and new products. However, as stated above, there is considerable record evidence which demonstrates the need and support for funding these programs over and above the minimum percentages authorized by the order in § 994.51 (a) and (b). Therefore, this exception is without basis and is denied.

The record evidence includes considerable information about State and regional promotion programs which are funded at various rates either on a voluntary or mandatory basis. Testimony from several State and regional promotion organizations cited the compatibility of these programs and those of the AEB. Because of the effectiveness of the cooperative funding program, the number of State promotion organizations receiving cooperative funds from the AEB increased from 17 in 1976 to 39 five years later. To encourage States and regions to continue and enlarge upon their programs, the order should specify that 15 percent, less expenses, be allocated to qualfied State or regional egg promotion, research, or consumer education programs. This 15 percent allocation should be proportionate to the amount of assessments collected from the area in which the program operates.

As part of its overall exception, APF contends that the order will curtail existing State and regional programs without providing significant new funds for State and regional efforts. Record evidence does not support this argument. In fact, during the hearing, representatives of State and regional promotion organizations stated that the new program would enhance their individual programs. Additionally, nothing in § 994.51(c) would preclude the Board from providing funds over and above the 15 percent allocated. APF further contends that there are no accounting requirements in the order for the 15 percent of funds allocated to the State and regional organizations, nor any requirements for reporting these expenditures back to the Board or to the Secretary. The order provides in § 994.45 regarding the duties of the Board, that the Board may enter into contracts or agreements with State and regional organizations. That section also provides for review and approval by the Board and Secretary, accounting of funds, and reporting under any contractual arrangement. Therefore, this part of the exception is denied.

The record indicates that brown egg production represents a small segment of total national production. However, there is a high concentration of brown egg production in the New England States, and there is some brown egg production in other geographic areas. Testimony noted that brown eggs are distinguished from white eggs only by shell color. Testimony further pointed out that brown egg producers in the New England States currently fund, on a voluntary basis, a brown egg advertising program which has been effective in that area.

While there is no evidence in the record that would demonstrate the need for a separate marketing order for brown eggs, based upon testimony at the hearing, the order should provide that a procedure be developed to ensure that programs for brown eggs are included at a level equal to the funding attributable to brown egg assessments. The order should also provide that the Board may contract with brown egg organization(s) for the purpose of developing and conducting programs for brown eggs. In so doing, the organization would be required to meet the same contractual terms as specified in § 994.45(i) with respect to developing plans or projects with attendant budgets, maintaining records, and submitting reports. Section § 994.51(d) has been modified to clarify the language of the provision. The recommended decision provided that funding for any such brown egg organization should be based on the proportion of funds received from brown egg production less administrative expenses and less the 15 percent allocated to any State in the predominately brown egg area. Record evidence supports inclusion of this provision in § 994.51(d). Further clarification is warranted, as pointed out in the exception filed by the New England Brown Egg Council which states that a brown egg advertising program should be continued under the order "while also supporting national expenditures, as provided in the order, for research and information on diet and health issues, and research and

development of new egg products." This intent is further supported by testimony. Therefore, § 994.51(d) of the order has been modified to provide that funding for any brown egg organization should be based on the proportion of funds received from brown egg production less expenses and less funds designated for State and regional programs, research projects involving diet and health issues, and new product and new uses reasearch and development programs.

Although there was some concern expressed during the hearing about whether assessments from brown eggs could be accounted for separately, it was pointed out that a computerized system, such as that presently used by the AEB for tracking producers and production, could identify assessments attributable to brown eggs.

Exceptions filed by the proponents and the New England Brown Egg Council state (1) that the permissive language in § 994.51(d) regarding the Board's contract authority should be changed to provide that the Board "shall" instead of "may' contract with a brown egg organization, (2) that further clarification is needed in that section to establish that assessments would be derived from handlers in the predominately brown egg area, and (3) that the Board should have the flexibility to establish a committee of brown egg producers and handlers to develop programs for brown eggs in the absence of a bona fide brown egg organization.

With respect to point (1), it has been established that there was no demonstrated need for a separate marketing order for brown eggs but, because of the record evidence supporting the need for specialized advertising programs for brown eggs, it is reasonable that the Board should be required to contract with any existing organization which represents a vast majority of brown egg producers and has an ongoing advertising program for brown eggs. Therefore, this suggestion is accepted. The additional language recommended in point (2) is reasonable to further clarify that any promotion effort targeted for brown eggs would be conducted only in that area of the country where brown eggs are a major commodity in the market. With respect to point (3), the suggested language in § 994.51(d) presented by the New England Brown Egg Council is accepted with a minor modification to clarify that any committee appointed from Board membership would assist the Board in the development of programs especially for brown eggs. Section 995.51(d) is additionally modified as discussed under points (1) and (2) above.

In its exception, APF argued that § 994.51(d) would allow one segment of the industry, brown egg producers, to benefit not only from generic egg advertising paid for by all producers, but also to receive special benefits from funds directed specifically for brown egg promotion. APF contends that this would defeat the goal of equal treatment. However, as stated previously, record evidence supports the need for specialized advertising programs for brown eggs in the predominately brown egg areas. APF further contends that a matter of fairness and consistency, those who engage in brand name advertising of eggs and egg products should be allowed to receive funds to reimburse those promotion efforts. However, the proposed order authorizes generic advertising only, except when the Board or State or regional promotion organization engages in cooperative advertising with a brand or trade name organization promoting a product other than eggs, spent fowl, or their products. For the reasons stated above, APF's exception is denied.

As stated earlier, evidence indicates that there are many State and regional organizations which presently conduct egg promotion, research, or consumer education programs. To be eligible to receive funds under § 994.51(c) of the order, any such State or regional organization must apply for certification and must meet certain requirements as specified in the order. The Secretary then should determine eligibility under the order. There should be a provision included in the order that cooperative promotion and research activities may be conducted with other products even though such products may utilize a brand or trade name other than eggs, spent fowl, or their products. Such cooperative advertising could include bakers, other users of eggs, and a variety of products and companies. However, cooperative advertising would be restricted as explained earlier and as clarified in § 994.53.

(d) The Board should be authorized to incur such expenses for research, promotion, advertising and consumer education and such other expenses for the administration, maintenance, and functioning of the Board as are approved by the Secretary. After the first year of operation, the Board must limit its expenses to the amounts received from assessments or in the reserve as provided in § 994.62.

The funds to cover the expenses of the Board should be obtained through assessments collected from handlers first handling eggs under regulations issued by the Board and approved by the Secretary. As noted in the record and briefs, there was some concern that handlers would be required to pay the assessment rather than producers, as is the case with several research and promotion programs on other commodities authorized by separate legislation. The Act permits regulation of handlers only and prohibits regulation of producers. Therefore, handlers, as the regulated entities, would be required to pay the assessment.

The order should provide for an initial assessment rate of one-half cent per dozen eggs marketed. Record evidence indicates that a one-half cent assessment would generate approximately $24 million which would provide the industry with sufficient funds to initiate meaningful research and promotion programs beneficial to the egg industry and the public.

The APF's exception contends that the order states that the estimated $24 million which would be raised from the initial one-half cent per dozen assessment rate during the first year after the implementation of the order would provide sufficient funds for research and promotion programs. However, the $24 million figure is an approximation based on an estimate of annual egg production and an assessment rate of one-half cent per dozen. The intent of the order is not to establish a limit of $24 million per year as the amount of money which the board would be allowed to collect in assessments. Rather, the estimated $24 million would provide sufficient funding for the board to initiate meaningful and effective programs. However, the order authorizes increases in the assessment rate as set forth in § 994.61(b). After the first year, the Board would be allowed to increase the assessment rate by up to one-fourth cent per dozen eggs annually, but in no event to increase the assessment rate above a 1-cent maximum. Therefore, the initial assessment rate provides funding to initiate research and promotion and educational programs while the provision for increases in the assessment rate provides for additional funding for any new or existing programs. Since the intent of the order is not to limit the collection of assessments by the board to $24 million per year, the APF's exception in this regard is denied.

The restriction on the assessment rate as set forth in the proposed order is necessary so handlers would know the maximum assessment which can be

levied upon them. This restriction still should provide a sufficient level of assessments to finance national programs of research, promotion and consumer information. The Board should also have the flexibility to lower the rate at any time as well. Approval of the Secretary should be required for any increases or decreases in the assessment rate.

A written exception filed by Cargill, Inc. contends that the initial assessment rate of one-half cent per dozen called for by the order is too high. The exception also questions the efficacy of egg advertising in providing increased benefits to egg producers.

The record evidence shows that there is a need for the initial assessment rate of one-half cent per dozen eggs set forth in this decision. It has been determined that this rate would generate the funds necessary to initiate effective research and promotion programs beneficial to the egg industry and the public.

The exception contends that since the assessments provided for in the national beef and pork research and promotion programs (7 U.S.C. 2901 *et seq.;* and 7 U.S.C. 4801 *et seq.*, respectively) represent a smaller percentage of producer revenue in these sectors than does the assessment provided for in the proposed egg marketing order, the assessment on eggs is disproportionately large. However, the size of the industry is not the only factor which was considered in determining the amount of the assessment rate for eggs. The appropriateness of the assessment rate is based not only on the size of the egg industry, but also on its needs. There is no testimony or record evidence which addresses the needs of the pork and beef industries with respect to the appropriateness of their assessment rates. Therefore, it is not possible to compare them with the needs of the egg industry nor to evaluate the beef and pork assessment rates relative to the assessment rate on eggs. The proponents did establish for the record a need for assessments at the level specified in the order to conduct an adequate program for eggs.

Cargill also contends that the result of the proposed order would be an "advertising war" between eggs and other commodities. However, record evidence does not support this contention. Although national advertising is an integral part of the proposed order, expenditures for other authorized programs, including reasonable administrative expenses, would constitute approximately one-third or more of total assessments collected. For example, a minimum of five percent of total assessments would be allocated each to health and nutrition projects and to development of new products made with eggs and new uses for eggs. In addition, the order also authorizes the allocation of 15 percent of assessments collected to qualified State or regional egg promotion organizations. Unspecified amounts also would be allocated to other authorized programs under the order. Therefore, it is anticipated that a significant portion of the total monies collected in assessments would be used for program expenses other than national advertising. In view of the record evidence supporting the need for the assessment rate, the exception by Cargill, Inc., is denied.

It has been determined that the provision for possible one-fourth cent per dozen increases in the assessment rate should be authorized, but only if approved by the Secretary. This approval would be contingent upon results of appropriate rulemaking procedures. In addition, such factors as actual progress or lack thereof of the programs being funded, the demand for eggs, and any other areas resulting from the programs implemented by the Board may be taken into consideration by the Secretary during the approval process. In order to clarify this process, § 994.61 is amended by adding a comma at the end of a paragraph (b) followed by: "and Provided Further, That any increase or decrease in the assessment rate shall be accomplished by rulemaking procedure after appropriate analyses as directed by the Secretary.

The proponents excepted to the language in § 994.61(b) which provided in part, that ". . . the Board, with the approval of the Secretary, may increase or decrease the level of assessments collected. . . ." Proponents argue that this language could be interpreted as authorizing the Board, with the approval of the Secretary, to establish the level of total assessements collected instead of the assessment level on each dozen eggs marketed. They therefore propose that § 994.61(b) be modified by deleting the "s" from the word "assessments" where it appears and by deleting the word "collected." This exception has merit in that it clarifies the intent and is supported by the record. It is therefore granted. Section 994.61(b) is amended accordingly.

The order should prohibit the use of funds for political activity or for the purpose of influencing governmental policy or action. The only exception should be that funds collected under the order may be used in recommending amendments to such order.

The Board should be allowed to authorize other organizations or agencies to collect assessments on its behalf as approved by the Secretary.

The Board should have the authority to establish a special reserve at the end of a fiscal period, not to exceed the limit set by the Board and approved by the Secretary. Funds in the reserve may be used during subsequent fiscal periods. Further, the Board should have authority to suspend the collection of assessments when the reserve exceeds the established limit.

The order should provide that in the event of termination, any monies collected and not spent would be distributed as the Secretary directs, provided that to the extent practicable, such funds would be returned pro rata to the persons who contributed.

The order should provide that late payment charges should be imposed on handlers who fail to pay assessments due to the Board by the due date, to be established by the Board. In addition, any outstanding amounts due plus late payment charges not paid should be subject to an interest charge. Any late payment and interest charges should be prescribed by the Board and approved by the Secretary before they are put into effect.

Record evidence indicates that any organization representing producers and/or handlers may apply for certification by the Secretary to participate in nominating the 18 producer and handler members to the Board to represent the geographic area of the organization. To be eligible, such an organization should be required to submit a request for certification which includes the geographic territory covered by its active members; the nature and size of its active membership, proportion of members who are commercial egg producers and/or handlers, egg production by State of its members and volume produced and/or handled by its members in such State; the extent to which the membership is represented in setting policies; evidence of the organization's stability and permanency; sources of its operating funds; functions of the organization; and, a statement of the organization's ability and willingness to further the aims and objectives of the order. The principal consideration for eligibility should be whether any organization's members represent a substantial number of producers and/or handlers who produce and/or handle a substantial volume of the area's commercial eggs to reasonably warrant its participation in the nomination process. The Secretary's decision is final for certification of organizations.

(e) The Board should have authority, with the approval of the Secretary, to require that all handlers, including egg-type hatchery operators and started pullet dealers, submit to the Board such reports and information as it may need to perform its functions and fulfill its responsibilities under the order. The record evidence is that in the normal course of business, handlers have the necessary information in their possession and, based on the requirements of the existing order, the proposed order's requirement that they furnish such information to the Board in the form of reports should not constitute an undue burden.

In order for the Board to effectively investigate and verify compliance with the order, each handler should be required to maintain for each fiscal period complete records with respect to eggs handled and eggs disposed of as will substantiate any reports required. Such records should be retained for not less than 2 years after the end of the fiscal period in which the transaction occurred, so that, if needed in connection with enforcement, the requisite records will be available for that purpose. For the purpose of assuring compliance with the recordkeeping requirements and verifying reports filed by handlers, the Secretary and the Board through their duly authorized agents and employees, should have access to and authority to examine such records. This section has been modified to reflect that the Secretary and the Board have access to records not only through their employees but also through their agents.

All reports and records submitted by handlers would be required to be kept confidential and the contents disclosed to no person other than employees of the Secretary and the Board. Only such information so furnished or acquired as the Secretary deems relevant should be disclosed by them, and then only in a suit or administrative hearing brought at the direction or upon the request of the Secretary. However, information may be compiled and released on a composite basis and such release of information should disclose neither the identity of the person furnishing the information nor such person's individual operations. This is necessary to prevent disclosure of information that may affect the trade or financial position of business operations of individual handlers.

(f) The provisions of § 994.76 through § 994.83 of the order are common to marketing agreements and orders now operating. The provision in § 994.84 regarding patents and copyrights is generally included in research and promotion program orders. All such provisions are incidental to and not inconsistent with the Act and are necessary to effectuate the other provisions of the recommended marketing order and marketing agreement and to effectuate the declared policy of the Act. The record evidence supports inclusion of each such provision as proposed in the Notice of Hearing. Those provisions which are applicable to both the marketing agreement and the marketing order, identified by section number and heading are as follows: § 994.76 Right of the Secretary; § 994.77 Duration of immunities; § 994.78 Derogation; § 994.79 Separability; § 994.80 Amendments; § 994.81 Termination or suspension; § 994.82 Proceedings after termination; and § 994.83 Effect of termination or amendment. Those provisions applicable to the marketing agreement only are: § 994.85 Counterparts; § 994.86 Additional parties; and § 994.87 order with marketing agreement.

The order should require periodic continuance referenda to reassess the level of producer support for the order. Such a provision was proposed by the Agricultural Marketing Service in the Notice of Hearing, which provided that the Board should recommend to the Secretary that a referendum be conducted within every 5-year period beginning on the effective date of the order. If, as a result of any referenda, the requisite number of producers did not favor continuation of the order, the Secretary would not be required to terminate the order. The referendum results would, however, provide the Secretary with a source of information, among others, to determine whether the order tends to effectuate the declared policy of the Act, as stated in § 994.81(a). Subsection (b)(1) of § 994.81 provides that the Secretary would terminate the order if a majority of all producers favored such termination provided that the majority had produced more than 50 percent of the total volume of such eggs for market. The criteria for termination is identical to that contained in the Act.

A question was raised during the hearing regarding the voting percentages to be used in the continuance referenda. Section 994.81(b)(2) does not specify the percentage necessary for a favorable vote by producers inasmuch as the action would not be the sole determinant of whether the order should be terminated. However, the results of such referenda should be based on a certain percentage of producers participating. Such requirements should be the same percentages set forth in section 8(c)(8) of the Act with respect to producer approval of the issuance of an order. Thus, the Secretary would consider termination of the order if less than two-thirds of the producers voting in the referendum and producers of less than two-thirds of the volume of production represented in the referendum favor continuance. This is an appropriate basis for ascertaining whether egg producers favor continuation of the program.

However, in evaluating the merits of continuance versus termination, the Secretary should not only consider the results of the continuance referendum but also should consider all other relevant information concerning the operation of the order and the relative benefits and disadvantages to producers, handlers, and consumers in order to determine whether continued operation of the order would tend to effectuate the declared policy of the Act. In this regard, in the event of an adverse vote by producers in a continuance referendum, the Secretary may solicit input from the public through meetings, press releases, or any other means. In any event, section 8c(16)(B) of the Act requires the Secretary to terminate the order whenever the Secretary finds that a majority of all producers favor termination, and such majority produced more than 50 percent of the commodity for market.

The exception filed by APF requests that the order be subjected to a review vote by those who pay for the program at least biannually (which it is assumed means every 2 years rather than twice yearly). The exception contends that 5 years is too long to wait for a review vote to determine whether continuance of the order is favored by producers. As a matter of clarification, those who pay for the program, or handlers, are not authorized by the Act to vote in any referendum unless they are also producers. With respect to the objection to the 5-year timeframe provided for in the order, it can be stated that a 2-year period would not allow sufficient time for evaluation of the research and promotion programs by producers to the extent warranted for an informed vote. In addition, the Secretary could constantly be engaged in conducting continuance referenda. This would be costly and unnecessary. Further, in the event there is a demonstrated reason, including a significant number of petitioners, the Secretary can hold a referendum at any time, as specified in the order. Therefore, the request for a change in the time period for continuance referenda is denied.

As referenced above, section 8(c)(8) of the Act sets forth the voting requirements necessary for issuance of an order wherein approval is determined by at least two-thirds of the producers voting in a referendum by number or volume. In its exception, APF contends that the order should not go into effect unless two-thirds of the producers voting in the referendum and two-thirds of the total volume of eggs produced favor the order. Since the voting requirements are statutory, the exception must be denied.

**Ruling on Briefs of Interested Parties**

At the conclusion of the hearing the Administrative Law Judge fixed June 9, 1986, as the final date for interested persons to file proposed findings and conclusions, and written arguments or briefs based upon the evidence received at the hearing.

Of the 20 briefs filed, 9 were in favor of the research and promotion provision of the proposed order and 11 were opposed. Those favoring the proposal including the proponents, individual producers and handlers, a State Department of Agriculture, the American Farm Bureau Federation, and a State Farm Bureau Federation, focused on the need for adequate funds for such a program to increase per capita use of eggs, citing that the egg industry could not compete for consumer dollars at the present time. Further, it was pointed out by a State Farm Bureau Federation and others that a well-funded generic advertising program had increased sales for some commodities and that it is likely that egg sales would increase under such a program. The brief filed by the proponents stated that approximately $24 million would be raised annually with a one-half cent assessment which would provide the egg industry an opportunity to fund not only promotion and advertising, but several other programs. In addition, funds would be available to respond to the growing need for expansion of new markets and development of new products using eggs, spent fowl and their products. Other points included the value of strengthening grass roots support through appropriate funding allowances for existing State and regional promotion programs.

Briefs filed in opposition included several food manufacturers, producer trade associations, a State Department of Agriculture, a public interest group, and food retailer/wholesaler associations. Several briefs opposed the proposal in general. Others focused on the proponents' failure to establish a need for such a program or to justify a nationwide program covering all types of eggs. It was further pointed out that there is evidence that voluntary, individual promotions are most effective and that regional promotion efforts have been successful. Specific points made by food manufacturing organizations, opined that the burden of the proposed assessment would fall disproportionately on buyers of breaker eggs and that manufacturers of egg products already bear the costs of developing and promoting their own products containing eggs.

In addition to briefs filed, comments from approximately 70 individuals, many of whom were producers and handlers, were received and considered. Most of the comments either supported or opposed the proposed order in general, without specifically referencing the research and promotion provision contained in the Notice of Hearing.

These briefs, proposed findings and conclusions, and the evidence in the record were considered in making the findings and conclusions set forth herein. In addition to the issues already discussed, it was argued that the proposed marketing order would violate the Act in section 608c (1) and (10) and section 608c (6)(I) of the Act because there is no legal basis for a research and promotion program that is not related to a marketing order with regulatory features, such as grades, sizes, and quality. Therefore, it was asserted that research and promotion cannot stand alone. It was also asserted that Department policy prohibited inclusion of research and development projects and marketing promotion in marketing orders unless such orders also contained regulatory provisions.

With respect to these arguments, it should be noted that the language of section 8c(6) provides that orders shall contain *one* or more of the terms and conditions as enumerated in paragraphs (A) through (J). Paragraph (I) refers specifically to research and promotion, including paid advertising and, therefore, would be considered as one term standing alone. Further, there is no indication of congressional intent to prohibit orders dealing exclusively with research and promotion. In addition, the present policy of the Department does not preclude the establishment of orders dealing with research and promotion programs.

In its exception Kraft, Inc., reiterated and expanded upon its arguments with respect to the legality of adopting a marketing order which is devoted solely to research and promotion. For the reasons started above, the exception with respect to this issue is denied.

Several recommendations and suggestions made during the hearing were adopted and the provisions of the order have been revised from the proposed order which accompanied the Notice of Hearing. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions as set forth herein, the request to make such findings or reach such conclusions are denied for the reasons previously cited in this decision.

**Ruling on Exceptions**

In arriving at the findings and conclusions, and the regulatory provisions of this decision, the exceptions to the recommended decision were carefully and fully considered in conjunction with the record evidence. To the extent that the findings and conclusions and the regulatory provisions of this decision are at variance with the exceptions, such exceptions are hereby denied for the reasons previously stated in this decision.

**Marketing Agreement and Order**

Annexed hereto and made a part hereof are two documents entitled, respectively, Egg Marketing Agreement and Egg Marketing Order. These documents have been decided upon as the detailed and appropriate means of effectuating the foregoing findings and conclusions.

It is hereby ordered, That this entire decision, except the annexed marketing agreement, be published in the **Federal Register.** The regulatory provisions of the marketing agreement are identical with those contained in the proposed order as hereby, annexed and published with this decision.

**Referendum Order**

It is hereby directed that a referendum be conducted in accordance with the procedure for the conduct of referenda (7 CFR 900.700 *et seq.*), to determine whether the issuance of the annexed Egg the terms of the order, who, during the representative period were engaged in the production of commercial eggs and own 10,000 or more laying hens. The representative period for the conduct of such referendum is hereby determined to be December 1, 1986 through February 28, 1987.

The agents of the Secretary to conduct such referendum are hereby designated to be Janice L. Lockard, Michael Newborg, and John W. Brockhouse, Jr., Poultry Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, DC 20250. The referendum

shall be conducted between May 25 and June 19, 1987.

**List of Subjects in 7 CFR Part 994**

Marketing agreement and order; Eggs.

Signed at Washington, DC, on April 1, 1987.

**Kenneth A. Gilles,**

*Assistant Secretary for Marketing and Inspection Services.*

**Egg Marketing Order** [1]

*Findings and Determinations Upon the Basis of the Hearing Record*

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held January–March 1986 upon a proposed marketing agreement and order on eggs, egg products, spent fowl, and products of spent fowl.

Upon the basis of the record it is found that:

General Findings

Upon the basis of the evidence introduced at such hearing, and the record thereof, it is found that:

(1) The marketing of eggs and derivatives of egg production produced in the 48 contiguous United States is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

(2) The proposed marketing agreement and order is limited in its application to the smallest regional production area which is practicable and consistent with carrying out the declared policy of the Act, and the issuance of several orders would not effectively carry out the declared policy of the Act;

(3) The proposed marketing agreement and order regulates handlers in the same manner as and is applicable only to persons in the respective classes of commercial activity specified in the proposed marketing agreement and order upon which a hearing has been held;

(4) There are no differences in the production and marketing of eggs and spent fowl in the production area which make necessary different terms and provisions applicable to different parts of such area; and

(5) The proposed marketing agreement and order and all the terms and conditions thereof, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

*Order Relative to Establishment of Research and Promotion Programs*

It is therefore ordered, That on and after the effective date hereof, the programs and projects authorized by the order shall be in conformity to and in compliance with the terms and conditions thereof, as follows:

Except for the previously noted modifications, the provisions of the proposed marketing agreement and order contained in the recommended decision issued by the Deputy Administrator on October 20, 1986, and published in the **Federal Register** on October 24, 1986 (51 FR 37822) shall be and are the terms and provisions of this order, and are set forth in full herein. Those sections identified with an asterisk (*) apply only to the proposed marketing agreement and not to the proposed marketing order.

## PART 994—EGGS

### Subpart—Egg Marketing Order

*Definitions*

Sec.



*Egg Marketing Board*



*Research and Promotion*



*Expenses and Assessments*



*Certification of Organizations*



*Miscellaneous provisions*



**Authority:** Secs. 1-9, 48 Stat. 31, as amended (7 U.S.C. 601 *et seq.*)

### Subpart—Egg Marketing Order

*Definitions*

**§ 994.1 Secretary.**

"Secretary" means the Secretary of Agriculture of the United States or any other officer or employee of the Department of Agriculture who has been delegated or who may hereafter be delegated the authority to act for the Secretary.

**§ 994.2 Act.**

"Act" means Public Act No. 10, 73d Congress (May 11, 1933), as amended and reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (Secs. 1-9, 48 Stat. 31, as amended, 7 U.S.C. 601 *et seq.*).

**§ 994.3 Egg Marketing Board.**

"Egg Marketing Board" or "Board" means the administrative body established pursuant to this subpart.

**§ 994.4 Fiscal period.**

"Fiscal period" means the calendar year or such other 12-month period that may be recommended by the Board and approved by the Secretary.

**§ 994.5 Person.**

"Person" means any individual, partnership, corporation, association, or any other business unit.

**§ 994.6 Producer.**

"Producer" means any person who is engaged in the production of commercial

[1] This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

eggs and owns 10,000 or more laying hens.

**§ 994.7 Handle.**

"Handle" means to grade, carton, process, purchase, or in any manner place eggs or cause eggs to be placed in the current of commerce (except as a common carrier of eggs owned by another). Such term shall not include the washing, packing of cases, or the delivery of a producer's own nest run eggs.

**§ 994.8 Handler.**

"Handler" means any person who handles eggs.

**§ 994.9 Hatching eggs.**

"Hatching eggs" means eggs intended for use by hatcheries for the production of baby chicks.

**§ 994.10 Hen or laying hen.**

"Hen" or "laying hen" means a sexually mature domesticated female chicken raised primarily for the production of commercial eggs.

**§ 994.11 Commercial eggs or eggs.**

"Commercial eggs" or "eggs" means eggs from domesticated hens, including egg-type breeder hens, which are sold for human consumption either in shell egg form or for further processing into egg products. Eggs from primary broiler breeder hens and/or broiler breeder hens shall not be considered "commercial eggs" or "eggs" pursuant to this section.

**§ 994.12 Egg product.**

"Egg product" means any dried, frozen, or liquid eggs, with or without added ingredients, excepting products which contain eggs only in relatively small proportion or historically have not been, in the judgment of the Secretary, considered by consumers as products of the egg food industry.

**§ 994.13 Spent fowl.**

"Spent fowl" means hens which have been in production of commercial eggs and have been removed from such production for slaughter.

**§ 994.14 Products of spent fowl.**

"Products of spent fowl" means commercial products produced from spent fowl.

**§ 994.15 United States.**

"United States" means the 48 contiguous States of the United States and the District of Columbia.

**§ 994.16 Marketing.**

"Marketing" means the sale or other disposition of commercial eggs, egg products, spent fowl, or products of spent fowl in any channel of commerce.

**§ 994.17 Promotion.**

"Promotion" means any action authorized by the Board to increase consumption of eggs, egg products, spent fowl, or products of spent fowl. "Promotion" does not include paid advertising for spent fowl or products of spent fowl.

**§ 994.18 Research.**

"Research" means any type of research, including nutrition, to advance the image, desirability, marketability, production, or quality of eggs, egg products, spent fowl, or products of spent fowl.

**§ 994.19 Consumer education.**

"Consumer education" means any action to advance the image or desirability of eggs, egg products, spent fowl, or products of spent fowl.

**§ 994.20 Eligible organization.**

"Eligible organization" means any organization, association, or cooperative which represents egg products and/or handlers of any egg producing area of the United States certified by the Secretary pursuant to this subpart.

*Egg Marketing Board*

**§ 994.35 Establishment and membership.**

There is hereby established an Egg Marketing Board composed of 22 members, including producers and handlers and one public member, and 22 alternates who shall have the same qualifications as the member for whom they are the alternate. Such members and alternates shall be appointed by the Secretary from nominations pursuant to § 994.37

**§ 994.36 Term of office.**

The members of the Board, and their alternates, shall serve for terms of 3 years, except initial appointments for producer and handler members and their alternates including the three at-large positions shall be divided equally for terms of 1, 2, and 3 years. The public member's initial term shall be 2 years. Each member and alternate member shall continue to serve until his/her successor has been qualified for Board membership and is appointed by the Secretary. No member or alternate shall serve for more than two consecutive 3-year terms.

**§ 994.37 Nominations.**

All nominations authorized under § 994.35 shall be made in the following manner.

(a) Within 60 days of the approval of this Order by referendum, nominations for 18 producer and handler members and alternates shall be submitted to the Secretary for approval and appointment for each geographic area as specified in paragraph (d) of this section, by eligible organizations, associations, or cooperatives certified pursuant to § 994.70, or, if the Secretary determines that a substantial number of producers or handlers are not members of, or their interests are not represented by, any such eligible organization, association, or cooperative, then from nominations made by such producers or handlers in the manner authorized by the Secretary;

(b) After the establishment of the initial Board, the nominations for subsequent Board members and alternates shall be submitted to the Secretary not less than 60 days prior to the expiration of the terms of the members and alternates previously appointed to the Board in accordance with paragraph (a) of this section;

(c) Where there is more than one eligible organization, association, or cooperative within each geographic area, as defined by the Secretary, they may caucus for the purpose of jointly nominating two qualified persons for each member and for each alternate member to be appointed. If joint agreement is not reached with respect to any nominations, or if no caucus is held within a defined geographic area, each eligible organization, association, or cooperative may submit to the Secretary a nomination for each appointment to be made;

(d) For purposes of nominating the 18 producer and handler members and their alternates to the Board, the 48 States of the United States shall be grouped into 6 geographic areas, as follows: Area 1 (North Atlantic States) consisting of Vermont, New Hampshire, Maine, Massachusetts, Connecticut, Rhode Island, New York, Pennsylvania, New Jersey, Delaware, Maryland, and the District of Columbia; Area 2 (South Atlantic States) consisting of Virginia, West Virginia, North Carolina, South Carolina, Georgia, and Florida; Area 3 (East North Central States) Ohio, Indiana, Illinois, Michigan, and Wisconsin; Area 4 (West North Central States) Minnesota, Iowa, Missouri, North Dakota, South Dakota, Nebraska, and Kansas; Area 5 (South Central States) Kentucky, Tennessee, Alabama, Mississippi, Arkansas, Louisiana, Oklahoma, and Texas; and Area 6 (Western States) Montana, Wyoming, Colorado, New Mexico, Arizona, Utah, Nevada, Idaho, Washington, Oregon, and California. The number of members of the initial Board, and their alternates, who shall be appointed from each area

are: Area 1–3; Area 2–3; Area 3–3; Area 4–2; Area 5–3; and Area 6–4;

(e) At least every 5 years, and not more often than every 3 years, the Board shall review the geographic distribution of egg production volume throughout the United States and, if warranted, shall recommend to the Secretary a reapportionment of areas and/or a modification of the numbers of members from areas in order to best reflect the geographic distribution of egg production volume in the United States. The number of members for each area which shall serve on the Board shall be determined by dividing the total volume of eggs produced in the United States for the calendar year previous to the date of review by 18 which provides a factor of volume of eggs per member, and then dividing the total volume of eggs for each area by such factor. In determining the volume of eggs produced in the United States, the Board and the Secretary shall utilize the information received by the Board pursuant to § 994.75 and data published by the Department;

(f) Upon appointment of the initial 18 Board members representing areas described in paragraph (d) of this section, such Board members shall nominate, and submit to the Secretary for approval and appointment, 3 additional producer and handler members of the Board representing at-large positions on the Board and 3 alternates for such positions. In making nominations for the three at-large positions, the Board, to the extent practical, should consider the representative composition of the Board appointments made pursuant to paragraphs (a) to (d) of this section and should utilize such nominations to provide representation to producers owning various size laying hen flocks. An additional position shall be filled by a public member. The public member and alternate member shall be nominated by the Board or selected by the Secretary at his discretion.

(g) The terms of the members of the Board representing at-large positions and their alternates shall expire upon the date of expiration of terms of Board members representing regions described in paragraph (d) of this section. Following the appointment of the initial Board, nominations for at-large positions and alternates for such positions on the Board shall be submitted to the Secretary by the Board at least 60 days prior to the expiration of the term for the position for which it was submitted.

**§ 994.38 Nominee's agreement to serve.**

Any person nominated to serve on the Board shall file with the Secretary at the time of the nomination a written agreement to:

(a) Actively serve on the Board if appointed;

(b) Disclose any position held with or any ownership interest in any organization that has a contractual relationship with the Board; and

(c) Withdraw from voting on matters where a Board member, or an alternate acting on behalf of a Board member, is an officer or board member of, or holds an ownership interest in, any organization proposing to contract with the Board. Membership in a nonprofit industry organization shall not require abstention from voting under this section.

**§ 994.39 Procedure.**

(a) Fifteen members of the Board shall be necessary to constitute a quorum and a majority of those present and voting will be required to pass any motion or approve any Board action.

(b) The Board may provide for meetings by telephone, telegraph, or other means of communication and any vote cast at such a meeting shall be confirmed promptly in writing: *Provided,* That if any assembled meeting is held, all votes shall be cast in person.

**§ 994.40 Vacancies.**

To fill any vacancy occasioned by the death, removal, resignation, or disqualification of any member, or an alternate member, of the Board, the Secretary shall appoint a successor from the most recent list of nominations from the geographic area concerned for the position or from nominations made by the Board for any at-large positions. A public member or alternate vacancy shall be filled from nominations submitted by the Board or by the Secretary at his discretion. Replacement of a Board member, or alternate, with an unexpired term of less than 6 months is not necessary.

**§ 994.41 Alternate members.**

An alternate member of the Board, during the absence of the member for whom he/she is the alternate, shall act in the place and stead of such member and perform such other duties as assigned. In the event of the death, removal, resignation, or disqualification of a member, his/her alternate shall act for him/her until a successor for such member is appointed and qualified.

**§ 994.42 Personal liability.**

No member of the Board, or any alternate, shall be held personally responsible, either individually or jointly with others, in any way whatsoever to any person for errors in judgment, mistakes, or other acts, either of commission or omission, of such member or alternate in performance of his/her duties, except for acts of willful misconduct, gross negligence, or those which are criminal in nature.

**§ 994.43 Expenses and compensation.**

The members of the Board, and their respective alternates when acting as members, shall be reimbursed for reasonable expenses necessarily incurred by them in the performance of their duties under this subpart and shall receive compensation at a rate to be determined by the Board and approved by the Secretary. Whenever specifically authorized or approved by the Board, an alternate member shall be reimbursed for reasonable expenses necessarily incurred by him/her in attending Board meetings and shall receive compensation at the rate provided in this section, notwithstanding that the Board member for whom he/she serves as alternate also attends such meeting.

**§ 994.44 Powers.**

The Board shall have the following powers:

(a) To administer this subpart in accordance with its terms;

(b) To make rules and regulations to effectuate the terms and provisions of this subpart;

(c) To receive, investigate, and report to the Secretary complaints of violations of the provisions of this subpart; and

(d) To recommend to the secretary amendments to this subpart.

**§ 994.45 Duties.**

It shall be the duty of the Board:

(a) To meet and organize, to select a chairman and such other officers as may be necessary, to select committees and subcommittees of Board members, and to adopt such rules and regulations for the conduct of its business as it may deem advisable;

(b) To act as intermediary between the Secretary and any producer or handler;

(c) To furnish to the Secretary such available information as may be requested;

(d) To appoint such employees, agents, and representatives as it may deem necessary and to determine the salaries and define the duties of each such person;

(e) To keep minutes, books, and records which clearly reflect all of the acts and transactions of the Board and such minutes, books, and records shall

be subject to examination at any time by the Secretary or any authorized agent or representative;

(f) To provide for the bonding of all persons handling Board funds in an amount and with surety thereon satisfactory to the Secretary;

(g) Prior to the beginning of each fiscal period, to submit to the Secretary a budget of projected income and expenses for such fiscal period, together with a report thereon;

(h) To cause the books of the Board to be audited by a certified public accountant at least once each fiscal period, and at such other time as the Board may deem necessary or as the Secretary may request. The report of such audit shall show the receipt and expenditure of funds collected pursuant to this subpart. A copy of each report shall be furnished to the Secretary. A copy of each such report also shall be made available at the principal office of the Board for inspection by producers and/or handlers; however, information of a confidential nature shall be removed from the report;

(i) With the approval of the Secretary, to enter into contracts or agreements with national, regional, or State egg organizations or other organizations or entities for the development and conduct of activities authorized pursuant to this subpart and for the payment of the cost thereof with funds collected through assessments pursuant to § 994.61. Any such contract or agreement shall provide that:

(1) The contractors shall develop and submit to the Board a plan or project together with a budget or budgets which shall show the estimated cost to be incurred for such plan or project;

(2) Any such plan or project shall become effective upon approval of the Secretary; and

(3) The contracting party shall keep accurate records of all its transactions and make periodic reports to the Board of activities conducted and an accounting for funds received and expended, and such other reports as the Secretary or the Board may require. The Secretary or employees of the Board may audit periodically the records of the contracting party.

(j) To disseminate information to producers and handlers or eligible organizations through programs or by direct contact utilizing the public postage system or other system(s);

(k) With the approval of the Secretary, to invest, pending disbursement pursuant to a plan or project, funds collected through assessments pursuant to § 994.61 and any late payment charges pursuant to § 994.64 in obligations of the United States Government or any agency thereof, in any interest-bearing account or certificate of deposit of a bank that is a member of the Federal Reserve system or in obligations fully guaranteed as to principal and interest by the United States Government; and

(l) To receive and evaluate, or, on its own initiative, develop and budget for plans or projects to promote the use and consumption of eggs, egg products, spent fowl, or products of spent fowl, as well as projects for egg research and consumer education and to make recommendations to the Secretary regarding such proposals.

(m) To prepare and make public, at least annually, a report of activities carried out and an accounting of funds received and expended.

*Research and Promotion*

**§ 994.50 Advertising, research, consumer education, and promotion programs.**

(a) The Board shall develop and submit to the Secretary for approval advertising, research, consumer education, and promotion programs or projects undertaken under the authority of this subpart. Such programs or projects may provide for:

(1) The establishment, issuance, effectuation, and administration of appropriate programs or projects for advertising of eggs and egg products; and sales promotion, and consumer education with respect to the use of eggs, egg products, spent fowl, and products of spent fowl: *Provided*, That any such program or project shall be directed toward increasing the general demand for eggs, egg products, spent fowl, or products of spent fowl;

(2) The establishment and carrying on of research projects and studies with respect to the nutritional attributes, sale, distribution, marketing, utilization, or production of eggs, egg products, spent fowl, and products of spent fowl, and the creation of new products thereof, to the end that the marketing and utilization of eggs, egg products, spent fowl, and products of spent fowl may be encouraged, expanded, improved, or made more acceptable, and the data collected by such activities may be disseminated; and

(3) The development and expansion of markets outside the United States and additional uses for eggs, egg products, spent fowl, and products of spent fowl.

(b) No advertising or promotion programs shall use false or unwarranted claims or make any reference to private brand names of eggs, egg products, spent fowl, and products of spent fowl or use unfair or deceptive acts or practices with respect to quality, value, or use of any competing product.

(c) At least once every 3 years the Board shall conduct studies subject to the approval of the Secretary, to determine the effectiveness of the activities authorized and conducted pursuant to this section.

**§ 994.51 Allocation of expenditures for research and promotion.**

(a) At least 5 percent of the assessments collected pursuant to § 994.61, less projected expenses of the Board, shall be allocated for research projects involving diet and health issues and/or the dissemination of information relating to diet and health issues.

(b) At least 5 percent of the assessments collected pursuant to § 994.61, less projected expenses of the Board, shall be allocated for projects involving new products and new uses research and development and/or marketing of new products.

(c) Fifteen (15) percent of the funds collected pursuant to § 994.61, less the projected expenses of the Board, shall be allocated to those State or regional egg promotion, research, or consumer education programs which are qualified pursuant to § 994.52. Funding to qualified promotion, research, or consumer education programs shall be made on a quarterly basis and shall be proportionate to the amount of assessments collected pursuant to § 994.61 from the area in which the qualified promotion, research, and/or consumer education program operates.

(d) The Board shall establish a procedure to ensure that brown eggs are included in programs for promotion, research, and consumer education at a level which is equal to the percentage for research and promotion funding which is attributable to brown egg handler assessments in the predominately brown egg area, less projected expenses and less the 15 percent of funds collected allocated to any State, as specified in paragraph (c) of this section, in the predominately brown egg area, and less funds for research projects involving diet and health issues and new products and new uses, as specified in paragraphs (a) and (b) of this section. In accordance with § 994.45(i), the Board shall contract with a brown egg producer and/or handler organization to develop and conduct programs for brown eggs. If no such representative organization exists, then the Board shall appoint a committee composed of brown egg producers and handlers to assist the Board in the development of programs specifically for brown eggs.

**§ 994.52 Qualified State or regional egg promotion, research, or consumer education programs.**

(a) Any organization which conducts a State or regional egg promotion research or consumer education program may apply to the Secretary for certification of qualification so that such program may be eligible to receive funding pursuant to § 994.51(c).

(b) In order to be certified by the Secretary as a qualified program, the program must:

(1) Provide for the conduct of activities as defined in § 994.50 that are intended to increase consumption of eggs, egg products, spent fowl, and products of spent fowl generally;

(2) Be financed primarily by producers and/or handlers, either individually or through cooperative associations; and

(3) Not use false or unwarranted claims or make references to private brand or trade names in its advertising and promotion of eggs, egg products, spent fowl, and products of spent fowl; and no funds provided by the Board pursuant to § 994.51(c) shall be utilized to promote eggs by using references to State or regional production.

**§ 994.53 Cooperative advertising, research, promotion, and consumer education.**

Nothing in this subpart shall prohibit the Board or qualified State or regional egg promotion, research, or consumer education organizations from engaging in cooperative advertising for eggs and egg products or research, promotion, or consumer education activities for egg products, spent fowl and products of spent fowl, even though such programs may utilize a brand or trade name of a product other than eggs, egg products, spent fowl, or products of spent fowl.

*Expenses and Assessments*

**§ 994.60 Expenses.**

The Board is authorized to incur such expenses as the Secretary finds are reasonable and likely to be incurred by the Board for its establishment, maintenance, and functioning and to enable the Board to exercise its powers and perform its duties. The funds to cover such expenses shall be paid from assessments, late payment charges, and any sums earned from investment of such funds, except that administrative funds for the initial year of operation may be obtained from other sources, with the approval of the Secretary. Following the initial year of operation, the Board is only authorized to incur expenses at a level at which it receives assessments to cover such expenses, with the exception of funds utilized from reserves pursuant to § 994.62.

**§ 994.61 Assessments.**

(a) Each handler first handling eggs pursuant to regulations issued by the Board and approved by the Secretary, shall pay an assessment to the Board on each dozen eggs handled which are produced by producers as defined in § 994.6 at such times and in such manner as prescribed by the Board.

(b) The first-year assessment rate shall be at the rate of ½ cent per dozen of eggs marketed. Following the initial year of operation, the Board, with the approval of the Secretary, may increase or decrease the level of assessment. *Provided,* That such assessment rate shall not increase at a rate greater than ¼ cent per year up to a maximum rate of 1 cent per dozen eggs marketed, and *Provided Further,* That any increase or decrease in the assessment rate shall be accomplished by rulemaking procedures after appropriate analyses as directed by the Secretary.

(c) The Board funds shall not, in any manner, be used for political activity or for the purpose of influencing governmental policy or action, except in recommending to the Secretary amendments to this subpart.

(d) The Board with the approval of the Secretary may authorize other organizations or agencies to act as the Board's agents to collect assessments in its behalf pursuant to regulations established by the Board and approved by the Secretary.

**§ 994.62 Excess funds.**

At the end of a fiscal period, funds collected in excess of the year's expenses for research, promotion, and consumer education, shall be placed in a separate special reserve not to exceed limits as the Board, with the approval of the Secretary, shall establish. Funds in such reserve shall be available for use by the Board for research, promotion, and consumer education activities during subsequent fiscal periods. If the funds contained in the special reserve exceed the limit placed on the special reserve, the Board, with the approval of the Secretary, shall temporarily suspend collection until funds in the special reserve are equal to or below the established limit.

**§ 994.63 Accounting of funds upon termination of Order.**

Any money collected as assessments pursuant to this subpart and remaining unexpended after termination of this subpart shall be distributed in such manner as the Secretary may direct: *Provided,* That to the extent practical, such funds shall be returned pro rata to the persons from whom such funds were collected.

**§ 994.64 Late payment charges.**

There shall be a late payment charge imposed on any handler who fails to pay his/her assessment within the prescribed time. In the event the handler thereafter fails to pay the amount outstanding, including the late payment charge, within the prescribed time, there shall be imposed an additional charge in the form of interest on the outstanding amount. The rate of such charges shall be prescribed by the Board with the approval of the Secretary.

*Certification of Organizations*

**§ 994.70 Certification of organizations.**

Any organization may request the Secretary for certification of eligibility to participate in nominating members and alternate members to the Board to represent the geographic area in which the organization represents egg producers and/or handlers. Such eligibility shall be based, in addition to other available information, upon a certified report submitted by the organization which shall contain information deemed relevant and specified by the Secretary for the making of such determination, including, but not limited to, the following:

(a) Geographic territory covered by the organization's active membership;

(b) Nature and size of the organization's active membership, proportion of total of such active membership accounted for by producers and/or handlers of commercial eggs, a chart showing the egg production by State in which the organization has members, and the volume of commercial eggs produced and/or handled by the organization's active membership in such State(s);

(c) The extent to which the commercial egg producers and/or handler membership of such organization is represented in setting the organization's policies;

(d) Evidence of stability and permanency of the organization;

(e) Sources from which the organization's operating funds are derived;

(f) Functions of the organization; and

(g) The organization's ability and willingness to further the aims and objectives of this subpart.

The primary consideration in determining the eligibility of an organization shall be whether its membership consists of a substantial number of egg producers and/or handlers who produce and handle a substantial volume of the applicable geographic area's commercial eggs to reasonably warrant its participation in

the nomination of members for the Board. The Secretary shall certify any organization which the Secretary finds to be eligible under this section and such determination as to eligibility shall be final.

*Miscellaneous Provisions*

**§ 994.75 Reports and records**

(a) Upon the request of the Board, with the approval of the Secretary, every handler, including handlers who are also egg-type hatchery operators and/or started pullet dealers, shall furnish to the Board in such manner and at such time as may be prescribed, such information as will enable the Board to exercise its responsibilities and duties under this subpart.

(b) Each handler shall establish and maintain for at least 2 succeeding years such records and documents with respect to eggs handled and eggs disposed of by such handler as will substantiate the reports required by this subpart.

(c) For the purpose of assuring compliance with the recordkeeping requirements and verifying reports filed by handlers, the Secretary and the Board through their duly authorized employers and agents, shall have access to and the authority to examine such records.

(d) All information obtained from the reports, records, and documents required to be maintained under this subpart shall be kept confidential by all persons, including employees of the Secretary and the Board and all officers and employees of contracting parties, and shall not be available to Board members and alternates or any other handlers, producers, or other interested persons. Only such information so furnished or acquired as the Secretary deems relevant shall be disclosed by them, and then only in a suit or administrative hearing brought at the direction, or upon the request, of the Secretary, or to which any officer of the United States is a party, and involving this subpart: Except that nothing in this subpart shall be deemed to prohibit that such data and information may be combined, and made availalble in the form of general reports in which the identities of the individual handlers are not disclosed and may be revealed to any extent necessary to effect compliance with the provisions of this subpart and the regulations issued thereunder.

**§ 994.76 Right of the Secretary**

The members of the Board (including successors and alternates), and any agent or employee appointed or employed by the Board, shall be subject to removal or suspension by the Secretary at any time. Each and every order, regulation, decision, determination or other act of the Board shall be subject to the continuing right of the Secretary to disapprove of the same at any time. Upon such disapproval by the Secretary, the disapproved action of the said Board shall be deemed null and void, except as to acts done in reliance thereon or in compliance therewith prior to such disapproval by the Secretary.

**§ 994.77 Duration of immunities.**

The benefits, privileges, and immunities conferred upon any person by virtue of this subpart shall cease upon the termination of this subpart, except with respect to acts done under and during the existence of this subpart.

**§ 994.78 Derogation**

Nothing contained in this subpart is, or shall be construed to be, in derogation or in modification of the rights of the Secretary or of the United States to exercise any powers granted by the Act or otherwise or, in accordance with such powers, to act in the premises whenever such action is deemed advisable.

**§ 994.79 Separability.**

If any provision of this subpart is declared invalid, or the applicability thereof to any person, circumstance, or thing is held invalid, the validity of the remainder of this subpart, or the applicability thereof, to any other person, circumstance, or thing, shall not be affected thereby.

**§ 994.80 Amendments.**

Amendments to this subpart may be proposed, from time to time, by the Board or by the Secretary.

**§ 994.81 Termination or suspension.**

(a) *Failure to effectuate policy of Act.* The Secretary may terminate or suspend the operation of any or all of the provisions of this subpart whenever the Secretary finds that such provisions do not tend to effectuate the declared policy of the Act.

(b) *Producer referendum.* (1) The Secretary shall terminate in accordance with Section 8(c)(16)(B) of the Act, the provisions of this subpart at the end of any fiscal period whenever the Secretary finds that such termination is favored by a majority of producers who, during the preceding fiscal period, have been engaged in the production for market of eggs: *Provided,* That such majority has during such period, produced for market more than 50 percent of the volume of such eggs for market.

(2) The Secretary shall conduct a referendum within every 5-year period beginning on the effective date hereof to ascertain whether continuance of this subpart is favored by the producers.

(c) *Termination of Act.* The provisions of this subpart shall, in any event, terminate whenever the provisions of the Act authorizing them cease to be in effect.

**§ 994.82 Proceedings after termination.**

(a) Upon the termination of the provisions of this subpart, the then-functioning members of the Board shall continue as trustees for the purpose of liquidating the affairs of the Board, of all the funds and property then in the possession of or under control of the Board, including claims for any funds unpaid or property not delivered at the time of termination. Action by said trusteeship shall require the concurrence of a majority of said trustees.

(b) The said trustees shall continue in such capacity until discharged by the Secretary; shall from time to time, account for all recipients and disbursements and deliver all property on hand, together with all books and records of the Board and of the trustees, to such person as the Secretary may direct; and shall upon request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person full title and right to all of the funds, property, and claims vested in the Board or the trustees pursuant thereto.

(c) Any person to whom funds, property, or claims have been transferred or delivered by the Board or its members, pursuant to this section, shall be subject to the same obligations imposed upon the members of the Board and upon the said trustees.

**§ 994.83 Effect of termination or amendment.**

Unless otherwise expressly provided by the Secretary, the termination of this subpart or of any regulation issued pursuant to this subpart, or the issuance of any amendments to either thereof, shall not

(a) Affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise in connection with any provisions of this subpart or any regulation issued under this subpart, or

(b) Release or extinguish any violation of this subpart or of any regulation issued under this subpart, or

(c) Affect or impair any rights or remedies of the Secretary or any other person with respect to any such violation.

**§ 994.84 Patents, copyrights, trademarks, inventions, and publications.**

(a) Any patents, copyrights, trademarks, inventions, or publications developed through the use of funds collected under the provisions of this subpart shall be the property of the U.S. Government as represented by the Board.

(b) Funds generated by such patents, copyrights, trademarks, inventions, or publications shall be considered income subject to the same fiscal, budget, and audit controls as other funds of the Board.

(c) Upon termination of this subpart, the Board shall transfer custody of all patents, copyrights, trademarks, inventions, and publications to the Secretary pursuant to the procedure provided for in § 994.82 of this subpart.

**§ 994.85 Counterparts.**

This agreement may be executed in multiple counterparts and when one counterpart is signed by the Secretary, all such counterparts shall constitute, when taken together, one and the same instrument as if all signatures were contained in one original.

**§ 994.86 Additional parties.**

After the effective date thereof, any handler may become a party to this agreement if a counterpart is executed by him or her and delivered to the Secretary. This agreement shall take effect as to such new contracting party at the time such counterpart is delivered to the Secretary, and the benefits, privileges, and immunities conferred by this agreement shall then be effective as to such new contracting party.

**§ 994.87 Order with marketing agreement.**

Each signatory hereby requests the Secretary to issue, pursuant to the Act, an Order providing for the establishment of programs and projects relating to research, consumer education, advertising, promotion, and product development for eggs, spend fowl, and products thereof, in the same manner as is provided for in the agreement.

**Note.**—Copies of this proposed rule may be obtained from: Janice L. Lockard, Poultry Division, AMS, USDA, Washington, DC 20250.

[FR Doc. 87-7566 Filed 4-2-87; 10:29 am]

BILLING CODE 3410-02-M

federal register

Monday
April 6, 1987

Part IV

# Railroad Retirement Board

20 CFR Parts 200, 209, 210, 216, 217, 230, 234, 260, 266, 320, 322, 325, 330, 335, 341 and 345

Procedures and Forms; Final Rule

## RAILROAD RETIREMENT BOARD

**20 CFR Parts 200, 209, 210, 216, 217, 230, 234, 260, 266, 320, 322, 325, 330, 335, 341, 345**

### Procedures and Forms

**AGENCY:** Railroad Retirement Board.

**ACTION:** Final rule.

**SUMMARY:** This amendment has been developed to inform the public about the central and field organization of the Railroad Retirement Board (hereinafter referenced as the "Board"); to inform the public of the revisions in the list of applications and related public reporting forms designated for use in applying for benefits under the various social insurance programs administered by the Board; to inform the public of revisions in the list of public reporting forms used in the maintenance of earnings records; and, to inform the public of the control numbers assigned by the Office of Management and Budget (OMB) to the information collection requirements of the Board.

**EFFECTIVE DATE:** April 6, 1987.

**FOR FURTHER INFORMATION CONTACT:** Pauline Lohens, Director, Information and Data Management, Railroad Retirement Board, 844 Rush Street, Chicago, IL 60611. Telephone: (312) 751–4692.

**SUPPLEMENTARY INFORMATION:** The affirmative responsibilities provisions of the Freedom of Information Act, as amended, 5 U.S.C. 552, require in relevant part that agencies publish in the **Federal Register** descriptions of their central and field organization and the reporting forms available to the public. These affirmative responsibilities provisions further require that agencies keep such descriptions reasonably current. In addition, the Paperwork Reduction Act of 1980, 44 U.S.C. 3501, requires in relevant part that Federal agencies minimize the paperwork burden they impose on the public. Finally, the Paperwork Reduction Act requires that such agencies obtain OMB approval of their public reporting, recordkeeping and other information collection requirements, and provide the public with notice of the clearance control numbers assigned by OMB.

To comply with the provisions of the above two Acts, this rule amends Chapter II of Title 20 of the Code of Federal Regulations: (1) To add a description of the Board's central and field organization, (2) to revise the descriptions of the Board's public reporting forms, (3) to add a subsection to display the control numbers assigned by OMB to the information collections which contain these forms, and (4) to insert such control numbers immediately following the appropriate substantive sections of the Board's regulations which identify or describe a particular information collection requirement. However, this rule does not establish any new information collection requirements nor does it describe any new information collection activities. Accordingly, we find that we are not required to obtain OMB re-approval for the currently approved information collection requirements technically contained herein.

Similarly, because this rule relates to agency organization and procedural matters, we find that it is not a "regulation or rule" within the meaning of Executive Order 12291 and is not subject to review by OMB or to any other provision of that Order. Further, we find that the provisions of the Regulatory Flexibility Act of 1980, 5 U.S.C. 601 through 612, do not apply to this rule since the Board is not an "agency" within the meaning of 5 U.S.C. 551(1).

I. For the reasons set forth in the preamble, Subchapter A of Chapter II is amended as follows:

## CHAPTER II—[AMENDED]

1. The headings for Subchapter A and for Part 200 are revised to read as follows:

### SUBCHAPTER A—GENERAL ADMINISTRATION

### PART 200—GENERAL ADMINISTRATION

2. The authority citation for Part 200 is revised to read as follows:

**Authority:** 45 U.S.C. 231f, 362 and 797, unless otherwise noted.

**§§ 200.1 through 200.6 [Redesignated as §§ 200.2 through 200.7]**

3. Sections 200.1 through 200.6 are redesignated as §§ 200.2 through 200.7, respectively.

4. A new § 200.1 is added to read as follows:

**§ 200.1 Designation of central and field organization.**

(a) *Introduction.* (1) The Railroad Retirement Board (hereinafter referenced as the "Board") is an independent agency in the executive branch of the Federal Government and is administered by three members appointed by the President, with the advice and consent of the Senate. By law, one member is appointed upon recommendations made by railroad labor organizations, one upon recommendations of railroad employers, and the third member, the Chairman, is in effect independent of employees and employers and represents the public interest. The terms of office are five years and are arranged so as to expire in different calendar years.

(2) The primary function of the Board is the determination and payment of benefits under the retirement-survivor and unemployment-sickness programs. To this end, the Board must maintain lifetime earnings records for covered employees, a network of field offices to assist railroad personnel and their dependents in filing claims for benefits, and examiners to adjudicate the claims.

(3) The Board administers the Railroad Retirement Act and the Railroad Unemployment Insurance Act. The Railroad Retirement Tax Act, which imposes employment taxes to fund the railroad retirement system, is administered by the Internal Revenue Service of the U.S. Department of Treasury. The Board also participates in the administration of the Federal Medicare health insurance program.

(4) The headquarters of the Board is in Chicago, Illinois, at 844 Rush Street. The Board maintains numerous district offices across the country in localities easily accessible to large numbers of railroad workers, in addition to five regional offices located in Atlanta, Georgia; Hackensack, New Jersey; Cleveland, Ohio; Kansas City, Missouri; and, San Francisco, California.

(b) *Internal Organization.* (1) In addition to the three Board Members, there is an Executive Director who reports directly to the Board Members and who is responsible for the overall administrative direction and coordination of the work of the entire Board organization.

(2) Responsibility for Board operations is concentrated in seven Associate Executive Directors, who report directly to the Executive Director and who serve on an Executive Committee advising the Executive Director on matters of agency-wide impact. The Associate Executive Director for Legal and Administrative Services is responsible for legal, appeals, personnel, legislative, information management, and internal services. The Associate Executive Director for Program Analysis is responsible for research, actuarial, and compensation operations. The Associate Executive Director for Retirement Claims is responsible for all claims operations under the Railroad Retirement Act. The Associate Executive Director for Unemployment and Sickness Insurance is responsible for all claims operations under the Railroad Unemployment Insurance Act, as well as certain employee protection

laws, and the Associate Executive Director for Field Service is responsible for all district and regional office operations. There is also an Associate Executive Director for Fiscal Operations and an Associate Executive Director for Data Processing.

(3) Further, the following offices provide administrative and other services in support of Board Operations: Office of Equal Employment Opportunity, Washington Legislative/ Liaison Office, Office of Planning, Office of Public Affairs and Bureau of Quality Assurance.

(c) *Office of Inspector General.* The Railroad Retirement Solvency Act of 1983 established the Office of Inspector General within the Board to be governed by the Inspector General Act of 1978. As structured, the Inspector General reports directly to the Chairman. The Office of Inspector General is responsible for policy direction and conduct of audit, inspection, and investigation activities relating to program and operations of the Board; and maintaining liaison with other law enforcement agencies, the Department of Justice, and United States Attorneys on all matters relating to the detection and prevention of fraud and abuse. The Inspector General reports semi-annually to the Congress through the Chairman concerning fraud, abuses, other serious problems, and deficiencies of agency programs and operations; recommends corrective action; and, reports on progress made in implementing these actions.

5. Newly redesignated § 200.3 is raised to read as follows:

**§ 200.3 Designation of forms and display of assigned OMB control numbers.**

(a) *Designation of forms and instructions.* (1) This paragraph lists the public reporting forms prescribed by the Railroad Retirement Board under the authority of the Railroad Retirement Act, the Railroad Unemployment Insurance Act and certain other Acts. The Board uses these reporting forms to obtain information from the public that it needs in administering these Acts. The public reporting forms have been organized into the following groups: applications for basic benefit programs and related forms; health insurance applications and related forms; forms for appeals, withdrawals, retention of benefits, substitution of payees and other actions subsequent to applying for a benefit; and, forms related to the crediting and maintenance of earnings records.

(2) *Applications for basic benefits and related forms.* The following forms are prescribed for use by railroad employees, members of their families and certain other individuals in applying for benefits under the Railroad Retirement Act and the Railroad Unemployment Insurance Act; these forms are also prescribed for use by certain third parties to provide information in support of an application for benefits.

(i) Application forms.

AA–1—*Application for Employee Annuity.* Used in applying for an employee annuity. Information collected includes: Applicant's personally identifying data, earnings, family history, work history, military service, railroad pensions, and benefits from other government agencies.

AA–1b—*Application for Recomputation of Employee Annuity Under the Railroad Retirement Act.* Used to obtain information from an employee who performed additional service in the railroad industry since his or her annuity began. The information will be used to recompute such annuity.

AA–1d—*Application for Determination of Employee Disability.* Used in applying for an employee disability annuity and in establishing a period of disability and early Medicare coverage. Information collected includes: Applicant's personally identifying data, medical condition, medical care, daily activities, education and training, work history, current earnings, and benefits from other government agencies.

AA–3—*Application for Spouse/Divorced Spouse Annuity.* Used in applying for a spouse's or divorced spouse's annuity. Information collected includes: Applicant's personally identifying data, earnings, family history, work history, and benefits from other government agencies.

AA–17—*Application for Widow(er)'s Annuity.* Used in applying for an insurance annuity and a lump-sum payment by the widow(er), remarried widow(er), or the surviving divorced spouse. Information collected includes: Applicant's personally identifying data, family history, employment information, benefits from other government agencies, and the work history and military service of the deceased spouse.

AA–17b—*Application for Determination of Widow(er) Disability.* Used in applying for a disability annuity and for early Medicare coverage by a disabled widow(er), a disabled widow(er) who has remarried, and a disabled divorced wife who has survived the employee. Infomation collected includes: The applicant's personally identifying data, medical condition, medical care, daily activities, education and training, work history, current earnings, and benefits from other government agencies.

AA–18—*Application for Mother's/Father's and Child's Annuity.* Used in applying for insurance annuity benefits by the following surivors—the mother or father, the remarried mother or father, or the surviving divorced spouse—on their own behalf and on behalf of the child of the deceased employee. Information collected includes: Applicant's personally identifying data, family history, work history, earnings, benefits from the other government agencies, and the deceased employee's work history and military service.

AA–19—*Application for Child's Annuity.* Used in applying, on behalf of a child of a deceased employee, for an insurance annuity and any insurance benefits payable under Title II of the Social Security Act. Information collected includes: Applicant's personally identifying data, family history, work history, earnings, benefits from other government agencies, and deceased employee's work history and military service.

AA–19a—*Application for Determination of Child Disability.* Used in applying for an annuity based upon the child's disability and for early Medicare coverage by a spouse or the disabled child himself or herself. Information collected includes: Applicant's personally identifying data, medical condition, medical care, daily activities, education and training, work history, earnings, and benefits from other government agencies.

AA–19s—*Application for Child's Annuity/ Full-Time Student.* Used in applying for an insurance annuity by a student who is the child of a deceased employee. Information collected includes: Applicant's personally identifying data, family history, work history, earnings, school attendance, benefits from other government agencies, and deceased employee's work history and military service.

AA–20—*Application for Parent's Annuity.* Used by the parent of a deceased employee in applying for an insurance annuity and for health insurance benefits. Information collected includes: Applicant's personally identifying data, family history, work history, earnings, benefits from other government agencies, and deceased employee's work history and military service.

AA–21—*Application for Lump-Sum Death Payment and Annuities Unpaid at Death.* Used by a surviving relative, a designated beneficiary or a funeral director to apply for, as appropriate, a lump-sum benefit or annuities due but unpaid at the annuitant's death. Information collected includes: Applicant's personally identifying data, burial expense information, and the deceased employee's family history, work history and military service.

ES–1a—*Application for Employment Service.* Used by an unemployed railroad employee in applying for employment counseling, referral and placement assistance services under the Railroad Unemployment Insurance Act; also used to enroll the names of separated railroad employees on the central register.

SI–1a—*Application for Sickness Benefits.* Used by a railroad employee in applying for sickness benefits under the Railroad Unemployment Insurance Act. Information collected will determine eligibility for benefits and the signed form will operate as a waiver for release of medical information.

SI–2—*Application and Statement of Sickness/Pregnancy, Miscarriage or*

*Childbirth.* Used by a female railroad employee in applying under the Railroad Unemployment Insurance Act for sickness benefits based on pregnancy, miscarriage or childbirth.

UI-1 (ES-1)—*Application for Unemployment Benefits & Employment Service.* Used by an unemployed railroad employee in applying for unemployment insurance benefits and employment referral services under the Railroad Unemployment Insurance Act.

(ii) Related forms.

AA-2P(R)—*Record of Employee's Prior Service (Retirement).* Used by an employer to inform the Board of an employee's pre-1937 creditable service and compensation.

AA-2P(U)—*Record of Employee's Prior Service (Unemployment).* Used by an employer to inform the Board of an employee's pre-1937 creditable service and compensation for railroad unemployment insurance purposes.

AA-4—*Self-Employment Questionnaire.* Used by an employee or the employee's spouse who has applied for a retirement annuity in order to determine whether any self-employment is exempt from "last person service" employment restrictions.

AA-11a—*Designation or Change of Beneficiary for Residual Lump Sum.* Used by an employee to designate the beneficiary or beneficiaries who would receive the residual lump-sum.

AA-15—*Employee's Statement of Service Performed Before January 1, 1937, to Employers Under the Railroad Retirement Act.* Used by an employee claiming creditable service prior to January 1, 1973 to assist the employer in locating the employee's service and compensation record. (The Board's records do not reflect service prior to 1937.)

ES-2—*Supplemental Information for Central Register (Card).* Used to update the central register of separated railroad employees.

ES-20a—*Applicant's Referral Report.* Used to refer a railroad employee or a railroad unemployment benefit claimant to a prospective employer. If unemployed, the claimant is informed that failure without good cause to comply with instructions or to accept suitable work available will prevent payment of benefits for 30 days.

ES-20b—*Employment Referral Card.* Used by a prospective employer to verify that the referred railroad worker: (1) Appeared for the interview and (2) was considered for the position.

ES-20c—*Notice of Job Opening.* Used to advise unemployed railroad employees of job opportunities for which they may apply or decline to apply without being penalized by a 30 day disqualification.

ES-21—*Referral to State Employment Service.* Used to refer a railroad unemployment insurance claimant to the State Employment Service for possible job openings. The claimant is informed that failure without good cause to comply with instructions to accept suitable work will prevent payment of benefits for 30 days.

ES-21c—*Report on Placement or Refusal or Referral or Job Offer to Railroad Retirement Board.* Used by a State Employment Service to verify whether the referred claimant: (1) Did appear for an interview and (2) was considered for job openings.

ES-22—*Unemployment Claims Agent's Placement Report.* Used by a railroad unemployment claims agent to report results of efforts to place an unemployed railroad employee in another job.

G-3EMP—*Report of Medical Condition by Employer.* Used to request information from a railroad employer about a disability applicant's medical condition and disqualification for work.

G-45—*Supplement to Claim of Person Outside the United States.* Used to obtain supplemental information from a non-U.S. citizen annuity applicant whose annuity may be subject to the income tax withholding provisions of the U.S. Internal Revenue Code; used to obtain information from a beneficiary who has informed the Board or a change in country of residence which may subject him or her to such tax withholding provisions.

G-86—*Certification in Support of Employer Service for Which No Records Are Available.* Used by an employee to reconstruct pre-1937 creditable service and compensation when the employer's records are incomplete or unavailable.

G-88—*Certificate of Termination of Service and Relinquishment of Rights.* Used to obtain evidence that an applicant for a retirement annuity has relinquished all rights to return to employer service.

G-88p—*Employer's Supplemental Pension Report.* Used to obtain pension data from an employer to correct the supplemental annuity amount payable to an annuitant or annuity applicant.

G-88r—*Request for Information About Employer Pension Plans.* Used to obtain information from an employer about any private pension plans that it may have established.

G-118—*Statement Regarding Adoption.* Used by a surviving child through his or her representative, to provide information supporting an equitable adoption; used by an employee or a spouse trying to increase an annuity by claiming an equitably adopted child; and, used by a third party or an institution to provide evidence of an equitable adoption in support of the claim of a surviving child, employee or spouse.

G-124—*Statement of Marital Relationship.* Used by a spouse to provide information in support of a marital relationship not solemnized by a civil or religious ceremony.

G-124a—*Statement Regarding Marriage.* Used by an individual who has knowledge of a marital relationship not solemnized by a civil or religious ceremony to provide information in support of that relationship.

G-131—*Authorization of Payment and Release of All Claims to a Death Benefit or Accrued Annuity Payment.* Used by a non-spouse survivor of a deceased employee to assign rights as a beneficiary to another beneficiary.

G-134—*Statement Regarding Contributions and Support.* Used by an applicant who, in order to qualify for benefits, must show receipt of one-half support from the employee at the time of the employee's retirement, period of disability onset or death. Among these applicants are: a parent of a deceased employee, a spouse and a widow(er).

G-204—*Verification of Worker's Compensation/Public Disability Benefit Information.* Used to obtain, from a public agency paying an applicant's worker's compensation or public disability benefits, verification of the information provided by an applicant.

G-208—*Public Service Pension Questionnaire.* Used to obtain information from a spouse or a survivor annuity applicant to determine if the annuity is or will be subject to a reduction for a public service pension.

G-209—*Employee Noncovered Service Questionnaire.* Used to obtain information from railroad employee annuitants or annuity applicants about benefits they either receive or expect to receive based on employment not covered under the Railroad Retirement Act or the Social Security Act.

G-214—*Worker's Compensation and Public Disability Benefit Questionnaire.* Used to obtain information from an annuity applicant as to whether he or she is receiving or will receive worker's compensation or public disability benefits. Such benefits may be offset against the annuity computation.

G-237—*Statement Regarding Marital Status.* Used by an applicant or an employee if still living to obtain information required in establishing the marital status of the employee, spouse or surviving spouse if the initial information about the dissolution of the marriage is inconclusive.

G-238—*Statement of Residence.* Used to obtain information to determine whether there should be a presumption in favor of the validity of the last of several conflicting marriages. This form is completed by an individual who was shown by Form G-237 as having some knowledge as to where the applicant or former spouse lived after the dissolution of the marraige.

G-238a—*Statement Regarding Divorce or Annulment.* Used to search official legal records for copies of divorce decrees or annulments.

G-250—*Report of Physical Examination.* Used by a disability applicant's personal physician to provide requested medical information.

G-251—*Vocational Report.* Used to obtain a work history and detailed job duties from employee and most surviving spouse disability applicants; used to establish the employee's regular occupation for purposes of an employee occupational disability determination.

G-256—*Application for Search of Census Records.* Used to obtain census records from Bureau of Census to provide evidence of age in support of an application for benefits if age is at issue and no better evidence of age is available.

G-273—*Statement of Death by Funeral Director.* Used by a funeral director for providing certification of death in lieu of a death certificate and for providing

information in support of a claim for death benefits.

G–273a—*Funeral Director's Statement of Burial Charges.* Used by a funeral director in connection with an application by a survivor (other than the surviving spouse who was living in the same household with the annuitant at the time of death) authorizing direct payment of the lump-sum death payment to the funeral director.

G–315—*Student Questionnaire.* Used in seasonal monitoring and to obtain information from a student to verify his or her status with respect to (1) Full time enrollment, (2) marriage, (3) age, (4) employment, (5) social security benefits, and (6) earned income.

G–315a—*Statement by School Official of Student's Full Time Attendance.* Used to obtain information from a school official to verify the full time attendance of a student beneficiary.

G–318—*Statement of Spouse of Employee Annuitant.* Used to obtain information from a railroad employee's spouse to determine whether such spouse is eligible for Railroad Retirement Act benefits under the overall minimum guaranty provision.

G–319—*Employee Annuitant's Statement Regarding Family and Earnings.* Used to obtain information from a railroad employee about child(ren), earnings, and receipt of social security benefits to determine whether any student-child(ren) are eligible for Railroad Retirement Act benefits under the overall minimum guaranty provision.

G–320—*Statement by Employee Annuitant Regarding Student Age 18–19.* Used to obtain information from a railroad employee about the employee's child(ren)'s school attendance, earnings, and social security benefits.

G–346—*Employee's Certification.* Used in determining whether there was a legal impediment to the marriage of the spouse or former spouse of a railroad employee.

G–423—*Financial Disclosure Statement.* Used to obtain financial information from an overpaid annuitant or claimant who is requesting that the Board waive its right to recover the overpayment.

G–476c—*Report of Former Spouse-Annuitant.* Used in determining the eligibility of a spouse annuitant or divorced spouse annuitant for an appropriate survivor annuity upon death of the employee. Information collected includes: Applicant's personally identifying information, recent work history, benefits from other government agencies, and identification of other family member(s) possibly eligible for survivor benefits.

ID–4k—*Notification to Employer That a Current or Former Employee Has Applied for Unemployment Benefits.* Used to notify a railroad employer that an employee has filed an unemployment compensation claim; used to grant such employer the opportunity to rebut the employee's statements as to current unemployment, reasons for current unemployment, date last worked, and/or nonpayment of vacation or other such pay.

ID–4L—*Notification to Employer That a Current or Former Employee Has Applied for Sickness Benefits.* Used to notify a railroad employer that an employee has filed a claim for sickness benefits; used to grant such employer the opportunity to rebut the employee's statements as to current sickness or injury, date last worked or returned to work, nonreceipt of a personal injury settlement or judgment for the infirmity which has precluded work, and/or non-receipt of wages or salary or benefits such as vacation or sick pay while not working.

ID–5i—*Letter to Non-Railroad Employers on Employment and Earnings of a Claimant.* Used to obtain information from a non-railroad employer about work performed during the period for which unemployment benefits were claimed.

ID–5r(SUP)—*Report of Employees Paid RUIA Benefits for Each Day in Month Reported as a Creditable Month of Service.* Used to obtain information from a railroad employee about compensation credited to an employee during the period for which either unemployment or sickness benefits were claimed.

ID–7h—*Non-Entitlement to Sickness Benefits and Information on Unemployment Benefits.* Used to notify a claimant that if he or she is unable to work for a longer period of time, he or she needs to have a doctor furnish additional medical information.

ID–11a—*Notice of Late Filing for Sickness Benefits.* Used to obtain information from an employee filing late for sickness benefits to determine whether the circumstances justify payment of benefits.

ID–28a(1)—*Statement in Lieu of an Application for Sickness Benefits.* Used by a survivor applying for sickness benefits for which the employee might have been eligible but for which no application had been filed.

ID–30k(1)—*Supplemental Information on Injury or Illness.* Used as a follow-up in obtaining information about the status of any personal injury claim based on the injury for which sickness benefits were paid.

RB–5—*Your Duties As Representative Payee.* Used to inform a substituted or representative payee of his or her recordkeeping duties with respect to the benefit payments he or she is receiving on behalf of an incompetent or incapacitated annuitant.

RL–11b—*Request for Hospital Medical Records.* Used to obtain copies of medical records from a private hospital when a disability applicant indicates that he or she received care from that hospital; used to provide that hospital with the applicant's written consent to disclose such information.

RL–11d—*Request for State Agency's Medical Information.* Used to obtain copies of medical reports and other information from a state agency that paid worker's compensation or public disability benefits when a disability applicant indicates that he or she received such benefits; used to provide the agency with the applicant's written consent to disclose such information.

RL–12/ID–31a—*Contract for Professional Services.* Used to request specific medical services from a consulting physician; used to provide the physician with reporting and reimbursement instructions.

RL–94–F—*Survivor Questionnaire.* Used to obtain information about the survivors or the estate of a deceased railroad employee to determine whether and to whom survivor benefits are payable.

RL–231–F—*Request to Non-Railroad Employer for Information About Annuitant's Work and Earnings.* Used to determine whether an annuitant has returned to work for "last person service" employer (i.e., the last employer before retirement of a railroad employee or spouse applicant).

RRB–1001—*Nonresident Questionnaire.* Used to obtain information from a non-resident annuitant about the status of his or her citizenship and legal residence for purposes of determining the amount of tax that must be withheld.

RRB–W4–P—*Withholding Certificate for Railroad Retirement Payments.* Used to obtain information from an annuitant about the amount to be withheld from any portion of his or her retirement benefits subject to federal income taxation.

SI–1b—*Statement of Sickness.* Completed by the railroad employee's physician to support the employee's claim of being unable to work because of illness or injury.

SI–1c—*Supplemental Information on Accident and Insurance.* Used to obtain further information from an employee about the identity of the person, company, and/or insurer who may be liable for damages to the employee and about the possibility of litigation and/or a settlement.

SI–3—*Claim for Sickness Benefits.* Used by an employer who has filed for sickness to provide information in support of a claim for benefits for a particular period, usually 14 days.

SI–5—*Report of Payments to Employee Claiming Sickness Benefits Under the Railroad Unemployment Insurance Act.* Used to obtain information from the allegedly liable party about the amount of damages received by a railroad employee from a personal injury settlement or lawsuit or about the amount of an award for a worker's compensation or an insurance claim. Form SI–5 is sent with Form ID–30b, which serves as a transmittal letter and explains the Board's right of reimbursement.

SI–7—*Supplemental Doctor's Statement.* Used to obtain medical evidence needed to supplement the medical information submitted on Form SI–1b, Statement of Sickness.

SI–10—*Statement of Authority to Act for Employee.* Used to determine who may act in a representative capacity for an employee when he or she has become incapable of signing documents and transacting business in connection with obtaining sickness benefits.

SI–62—*Claim for Sickness Benefits Due Employee But Not Paid at Death.* Used by a survivor to claim unpaid sickness benefits for which the deceased employee was ineligible.

UI-1e—*Pay Rate Report.* Used by a claimant for sickness or unemployment benefits to provide information on his or her last railroad employment and pay rate when such information is not otherwise available from the Board's records.

UI-1f—*Pay Rate Report.* Used by an employer to verify the rate of pay reported by an employee.

UI-1g—*Employee-Employer Statement of Pay Rate.* Used to obtain information from both the employee and the employer when the employee believes that his or her pay rate was not reported accurately by the employer.

UI-3—*Claim for Unemployment Benefits.* Used by a claimant for unemployment benefits to provide information in support of claimed days of unemployment during a 14-day registration period.

UI-9—*Applicant's Statement of Employment and Wages.* Used by a claimant for unemployment or sickness benefits if his or her current service and compensation either have not yet been reported or have been underreported to the Board.

UI-13—*Notice of Payment of Separation Allowance.* Used by an employer to provide information about a former employee's separation from service.

UI-23—*Claimant's Statement of Service for Railroad Unemployment Insurance Benefits.* Used by a claimant for unemployment or sickness benefits to establish whether he or she has sufficient service to qualify for extended or accelerated benefits.

UI-35—*Field Office Record of Claimant Interview.* Used to conduct a personal interview of a claimant for unemployment benefits at a field office or itinerant point.

UI-44—*Claim for Credit for Military Service (RUIA Act).* Used to obtain information from a claimant about military service because such service can be used under certain circumstances to extend employment or sickness benefits under the Railroad Unemployment Insurance Act.

UI-45—*Certification Regarding Rights to Unemployment Benefits.* Used by a claimant who has voluntarily left work to certify whether he or she has rights to benefits under any other unemployment insurance law.

UI-48—*Claimant's Statement Regarding Benefit Claims for Days on Which He Worked.* Used to obtain the claimant's explanation for claiming benefits for days on which he or she was apparently employed.

UI-54—*Unemployment Claims Agent's Statement Regarding Benefit Claims for Days on Which a Claimant Worked.* Used to obtain information from an unemployment claims agent concerning a claimant's alleged employment on days claimed as days of unemployment.

UI-62—*Canadian Unemployment and Sickness Benefit Information.* Used to obtain the Canadian social insurance number from a claimant for unemployment or sickness benefits when a claimant's address indicates Canadian residency.

UI-63—*Application for Accrued Benefits Due Under the Railroad Unemployment Insurance Act and Unpaid at Death.* Used by a survivor to apply for the accrued sickness or unemployment benefits unpaid at the death of the employee; also used to identify the proper payee.

(3) *Health insurance applications and related forms.* The following forms are prescribed for use by qualified railroad retirement beneficiaries to establish entitlement based on age or disability, and to enroll and collect benefits under the Social Security health insurance program administered by the Board.

(i) Application forms.

AA-6—*Employee Application for Medicare.* Used by an employee not entitled to monthly benefits to apply for hospital insurance and supplemental medical insurance.

AA-7—*Spouse/Divorced Spouse Application for Medicare.* Used by the spouse or divorced spouse, neither of whom would be otherwise entitled to benefits under the Railroad Retirement Act, to apply for hospital and supplemental medical insurance.

AA-8—*Widow/Widower Application for Medicare.* Used by a widow(er) who is not otherwise entitled to benefits under the Railroad Retirement Act to apply for hospital and supplemental medical insurance.

(ii) Related forms.

AA-104—*Application for Canadian Hospital Benefits Under Medicare—Part A.* Used by a qualified railroad retirement beneficiary to apply for hospital benefits under Part A of Medicare for services provided in Canada. The information provided is verified by the Board's Canadian contractor, currently Blue Cross of Ontario, before any benefits are paid.

G-740B—*Requests for Medicare Payment by Organizations Which Qualify to Receive Payment for Paid Bills.* Used by Railroad Hospital Associations and Group Prepayment Plans approved to receive reimbursement directly from the Medicare carrier for charges that the organization paid for services to its members.

G-740s—*Patient's Request for Medicare Payment.* Used by a qualified railroad retirement beneficiary to file a claim for Part B (supplemental medical) benefits directly with the Board's carrier.

HCFA-1500—*Common Health Insurance Claim Used by Physicians and Suppliers.* Used by a physician or other supplier of Part B (supplemental medical) services to claim payment.

(4) *Forms for post-application actions.* The following forms are prescribed for use by the public to retain benefits and to request an appeal from a denial of benefits, a withdrawal of an application, a substitution of a representative payee for an incompetent annuitant, and similar actions subsequent to applying for a benefit.

AA-5—*Application for Substitution of Payee for Employee, Spouse or Survivor Annuitant.* Used in applying for a substitute payee to receive benefits on behalf of an incompetent annuitant. Information collected includes that needed to select a representative or substitute payee who will serve in the best interest of the incompetent beneficiary.

G-19—*Annual Earnings Monitoring Questionnaire.* Used annually by an annuitant to report work and earnings since excess income may reduce the amount of an annuity and type of work performed may suggest recovery from disability.

G-99a—*Representative Payee Report.* Used in obtaining information from a substitute or representative payee to monitor the performance of his or her duties with respect to the annuitant.

G-99c—*Representative Payee Evaluation Report.* Used in obtaining more highly detailed information from a substitute or representative payee who has failed to respond to Form G-99A, above; also used to determine whether the current payee should continue in this capacity.

G-254—*Continuing Disability Report.* Used to obtain current information about a disability beneficiary's work activity and medical condition to determine continuing entitlement to disability benefits.

G-478—*Statement Regarding Patient's Capability to Manage Payments.* Used to obtain—from an annuitant's attending physician or from a medical officer attached to an institution—medical evidence of such annuitant's incapacity to manage his or her personal and financial affairs.

G-718—*Request for Termination of Supplementary Medical Insurance.* Used by a beneficiary to provide the information needed to terminate his or her supplemental medical insurance.

G-790—*Request for Review of Part B Medicare Claim.* Used by a beneficiary claiming Part B medical insurance benefits to request reconsideration of a benefit determination by the carrier.

G-791—*Request for Hearing—Part B Medicare Claim.* Used by a qualified railroad retirement beneficiary to request a hearing following review when an unfavorable redetermination decision has been made on a Part B Medicare claim.

HA-1—*Appeal Under the Railroad Retirement Act.* Used by an applicant or an annuitant to appeal to a referee from a denial of a claim for retirement or disability benefits, or to appeal from a referee's decision to sustain the original denial.

HA-4—*Appeal Under the Railroad Unemployment Insurance Act.* Used by a claimant to appeal both an initial determination, a redetermination and/or a referee's decision denying railroad unemployment or sickness insurance benefits.

(5) *Forms related to maintenance of earnings records.* The following forms are used by the Railroad Retirement Board, by railroad employers, and by other members of the public in connection with the crediting and

maintenance of earnings records of railroad wage earners.

AA-12—*Notice of Death and Statement of Compensation.* Used by an employer to notify the Board of the date of death of an employee and to report any service and compensation not yet reported to the Board; such "lag period" data is used to determine entitlement to, and amount of, the annuity payable to the survivors of the employee.

BA-3a—*Annual Report of Creditable Compensation.* Used by an employer to report service months and compensation for each railroad employee annually.

BA-4—*Report of Creditable Compensation Adjustments.* Used by an employer to correct service and compensation previously reported, or to report service and compensation that was omitted from a previous report.

BA-5—*Quarterly Summary Report of Employee Compensation Adjustments.* Used by an employer to summarize on a quarterly basis monthly adjustments to employee compensation.

DC-1—*Employer's Quarterly or Annual Report of Contributions Under the Railroad Unemployment Insurance Act.* Used by an employer to show and to certify periodic contributions to the Railroad Unemployment Insurance fund.

DC-2—*Employee Representative's Report of Compensation.* Used by an employee representative to update his or her creditable service and compensation record which is the basis for payment of benefits under the Railroad Retirement Act.

DC-2a—*Employee Representative's Status Report.* Used to determine whether an individual qualifies for employee representative status.

DC-3—*Claim for Abatement or Refund of Contributions, Interest, or Penalty.* Used by an employer to claim abatement of liability or to claim a refund of contributions to the railroad unemployment insurance account.

ERR-8—*Employment Relation Questionnaire.* Used by an employer to inform the Board when an employee was not in compensated service on August 29, 1945 and did not perform six months of service after August 29, 1935 and before January 1, 1946.

G-88a—*Employer's Supplemental Report of Service and Compensation.* Used to obtain a report of "lag service" and compensation from an employer to help determine entitlement to, and the amount of, an annuity.

GL-99—*Employee Deemed Service Month Questionnaire.* Used to obtain information from a railroad employer to determine (1) Whether a claimant had an employment relationship with a covered railroad employer or was an employee representative during a month worked, and (2) whether such claimant can be credited with a deemed month of service.

UI-41—*Supplemental Report of Service or Compensation.* Used to obtain a report of service months and compensation from an employer covering the period between the Board's last recorded annual entry and the date when the claim for unemployment benefits was filed (i.e., the "lag period").

UI-41A—*Supplemental Report of Compensation.* Used to obtain information from an employer about an employee's compensation, not exceeding $775 per month, to determine whether additional benefits may be paid.

(b) *OMB control numbers assigned under the Paperwork Reduction Act.*

(1) This paragraph collects and displays the control numbers assigned to information collection requirements of the Railroad Retirement Board (the "Board") by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980. Further, such OMB control numbers have been appropriately dispersed throughout the Code of Federal Regulations, following the pertinent section prescribed by the Board. The Board intends that this chapter complies with section 7(b) of Chapter 35 of Title 44 of the United States Code, which requires in relevant part that Federal agencies display a current control number assigned by the Director of the Office of Management and Budget for each agency information collection requirement.

(2) In addition to being dispersed throughout the substantive text of this chapter, the OMB control numbers have also been compiled into the following tables of information collection requirements which includes the public reporting forms listed in paragraph (a) of this section as well as certain other information collection activities. In these tables, the Board's public reporting forms are associated with the OMB control number assigned to the information collection containing each form. The public reporting forms are also associated, where applicable, with the section or paragraph of the Code of Federal Regulations (CFR) in which they are identified or described.

TABLE 1A.—RAILROAD RETIREMENT BOARD APPLICATION AND RELATED FORMS

| Railroad Retirement Board Form No. | 20 CFR (unless otherwise noted) Part, Section or Subsection Where Form is Identified or Described | Current OMB Control No. |
|---|---|---|
| AA-1 | 217.3; 217.5; 217.6; 218.7; 218.8. | 3220-0002 |
| AA-1d | | 3220-0002 |
| AA-2P(R) | 210.7 | 3220-0003 |
| AA-3 | 216.21; 217.3; 217.6; 218.7; 218.8; 219.33; 234.30. | 3220-0042 |
| AA-4 | | 3220-0138 |
| AA-5 | 266.12 | 3220-0052 |
| AA-6 | | 3220-0082 |
| AA-7 | | 3220-0082 |
| AA-8 | | 3220-0082 |
| AA-11a | 234.42 | 3220-0031 |
| AA-12 | 209.4; 209.5 | 3220-0005 |
| AA-15 | 210.7 | 3220-0003 |
| AA-17 | 216.31; 217.3; 217.6; 218.7; 218.8; 219.31. | 3220-0030 |
| AA-17b | 216.31; 218.7; 218.8 | 3220-0030 |
| AA-18 | 216.31; 216.46; 217.3; 217.6; 218.7; 218.8; 219.33. | 3220-0030 |
| AA-19 | 216.47; 217.3; 217.6; 218.7; 218.8. | 3220-0030 |
| AA-19a | 216.47; 218.7; 218.8 | 3220-0030 |
| AA-19s | 218.7; 218.8; 219.27 | 3220-0030 |
| AA-20 | 216.71; 217.3; 217.6; 218.7; 218.8. | 3220-0030 |
| AA-21 | 217.10; 219.34; 234.10; 234.30. | 3220-0031 |
| AA-104 | | 3220-0086 |
| BA-3a | 209.6; 345.4(a) | 3220-0008 |
| BA-4 | 209.7; 209.9; 345.4(b) | 3220-0008 |
| BA-4 | 209.13 | 3220-0158 |
| BA-5 | 209.8; 345.4(c) | 3220-0008 |
| DC-1 | 345.5; 345.7 | 3220-0012 |
| DC-2 | 209.10 | 3220-0014 |
| DC-2a | 209.10 | 3220-0014 |
| ES-1a | 325.13 | 3220-0057 |
| ES-2 | 325.13 | 3220-0057 |
| ES-20a | 325.13 | 3220-0057 |
| ES-20b | 325.13 | 3220-0057 |
| ES-20c | 325.13 | 3220-0057 |
| ES-21 | 325.13 | 3220-0057 |
| ES-21c | 325.13 | 3220-0057 |
| ES-22 | 325.13 | 3220-0057 |
| G-3EMP | | 3220-0038 |
| G-19 | | 3220-0073 |
| G-45 | | 3220-0155 |
| G-86 | 210.7(b) | 3220-0003 |
| G-88 | 216.9; 216.21 | 3220-0016 |
| G-88a | 209.5 | 3220-0005 |
| G-88p | 209.2 | 3220-0089 |
| G-99a | 266.12 | 3220-0151 |
| G-99c | 266.12 | 3220-0151 |
| G-118 | 219.24 | 3220-0040 |
| G-124 | 219.16 | 3220-0021 |
| G-124a | 219.16 | 3220-0021 |
| G-131 | 234.61 | 3220-0031 |
| G-134 | 219.26; 219.31 | 3220-0099 |
| G-204 | 219.64(c) | 3220-0002 |
| G-208 | | 3220-0136 |
| G-209 | | 3220-0154 |
| G-214 | | 3220-0002 |
| G-237 | 219.18 | 3220-0021 |
| G-238 | 219.18 | 3220-0021 |
| G-238a | 219.18 | 3220-0021 |
| G-250 | | 3220-0038 |
| G-251 | | 3220-0141 |
| G-254 | | 3220-0073 |
| G-256 | 219.11 | 3220-0106 |
| G-273 | 219.12 | 3220-0077 |
| G-273a | 219.34; 234.13 | 3220-0031 |
| G-315 | 219.27 | 3220-0123 |
| G-315a | 219.27 | 3220-0123 |
| G-318 | | 3220-0083 |
| G-319 | | 3220-0083 |
| G-320 | 219.27 | 3220-0083 |
| G-346 | | 3220-0140 |
| G-423 | | 3220-0127 |
| G-476c | 216.31 | 3220-0030 |
| G-478 | 266.12 | 3220-0052 |
| G-718 | | 3220-0098 |
| G-740B | | 3220-0131 |
| G-740s | | 3220-0131 |
| G-790 | | 3220-0100 |
| G-791 | | 3220-0100 |
| GL-99 | | 3220-0156 |
| HA-1 | 260.5(b); 260.9(b) | 3220-0007 |
| HA-4 | 320.12; 320.39 | 3220-0020 |
| HCFA-1500 | | 3220-0131 |
| ID-4k | | 3220-0153 |
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| ID-28a(1) | | 3220-0055 |
| ID-30k(1) | 341.4 | 3220-0036 |
| RB-5 | 266.12 | 3220-0052 |
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| RL-94-F | 217.10 | 3220-0032 |
| RRB-1001 | | 3220-0145 |
| RRB-W4-P | | 3220-0149 |
| SI-1a | 335.102 | 3220-0039 |
| SI-1b | 335.103 | 3220-0039 |

TABLE 1A.—RAILROAD RETIREMENT BOARD APPLICATION AND RELATED FORMS—Continued

| Railroad Retirement Board Form No. | 20 CFR (unless otherwise noted) Part, Section or Subsection Where Form is Identified or Described | Current OMB Control No. |
|---|---|---|
| SI-1c | 341.4 | 3220-0036 |
| SI-2 | 335.202 | 3220-0039 |
| SI-3 | 335.104(b) | 3220-0039 |
| SI-5 | 341.4 | 3220-0036 |
| SI-7 | 335.103 | 3220-0045 |
| SI-10 | 335.102 | 3220-0034 |
| SI-62 | | 3220-0055 |
| UI-1(ES)-1 | 325.13 | 3220-0022 |
| UI-1e | 330.4 | 3220-0097 |
| UI-1f | 330.4 | 3220-0097 |
| UI-1g | 330.4 | 3220-0097 |
| UI-3 | 325.12(b) | 3220-0022 |
| UI-9 | 325.13; 335.102 | 3220-0025 |
| UI-13 | | 3220-0093 |
| UI-23 | 325.13; 335.102 | 3220-0025 |
| UI-35 | 325.13 | 3220-0057 |
| UI-41 | | 3220-0070 |
| UI-41A | | 3220-0070 |
| UI-44 | | 3220-0072 |
| UI-45 | | 3220-0079 |
| UI-48 | 322.4 | 3220-0048 |
| UI-54 | 322.4 | 3220-0049 |
| UI-62 | | 3220-0074 |
| UI-63 | | 3220-0055 |

TABLE 1B.—OTHER RAILROAD RETIREMENT BOARD INFORMATION COLLECTION ACTIVITIES REFERENCED BY PERTINENT CFR SECTION AND OMB CONTROL NUMBER

| Railroad Retirement Board Information Collection | 20 CFR (unless otherwise noted) part, section or subsection where form is identified or described | Current OMB Control No. |
|---|---|---|
| Disclosure of Business Information Under FOIA. | 200.3 | 3220-0150 |
| Gross Earnings Report | 209.12 | 3220-0132 |
| Procurement Request | | 3220-0139 |
| Railroad Job Vacancies | | 3220-0122 |
| Railroad Employer 5 Year Recordkeeping Requirement. | | 3220-0008 |

(c) Public reporting forms submitted to fewer than ten individuals annually and, consequently, not required to display OMB control numbers.

(1) This paragraph collects and displays the public reporting forms of the Railroad Retirement Board which are exempt from displaying Office Management and Budget (OMB) control numbers under the Paperwork Reduction Act. The Board intends that this paragraph complies with the requirements of section 6(c) of Chapter 35 of Title 44 of the United States Code which provide that those information collection requests that:

(i) Require the public to respond under penalty of law or as a condition of obtaining a benefit and

(ii) Are submitted to fewer than ten persons annually must contain a statement informing the public that they are exempt from OMB review. As a result of being exempt from such review, these information collections are also exempt from having to display a control number. The Board further intends that this list be a supplement to, rather than a substitution for, the statement of exemption that appears on the form.

(2) Display.

**Table 2—Public Use Forms Exempt From Displaying OMB Control Numbers**

| Railroad Retirement Board Farm Number: | *20 CFR Part, section or subsection where form is identified or described* |
|---|---|
| AA-1b | 217.5 |
| AA-2P(U) | 210.7 |
| DC-3 | 345.13 |
| ERR-8 | 209.2 |
| G-88r | 209.2 |

## Subchapter B—[Amended]

II. Subchapter B of Chapter II is amended as follows:

a. The authority citation for Part 209 continues to read as follows:

**Authority:** Secs. 7(b) (5) and (6), Pub. L. 93-445, 88 Stat. 1339, 1340 (45 U.S.C. 231f(b) (5) and (6)); sec. 9, Pub. L. 93-445, 88 Stat. 1343 (45 U.S.C. 231(h); sec. 13(a), Pub. L. 93-445, 88 Stat. 1345 (45 U.S.C. 2311).

b. The authority citation for Part 210 continues to read as follows:

**Authority:** Sec. 1 (d), (e) and (f), Pub. L. 93-445, 88 Stat. 1307 and 1308 (45 U.S.C. 231 (d), (e) and (f)); sec. 3(i), Pub. L. 93-445, 88 Stat. 1325 and 1326 (45 U.S.C. 231(i)); sec. 7(b)(5), Pub. L. 93-445, 88 Stat. 1339 (45 U.S.C. 231f(b)(5)).

c. The authority citation for Part 216 continues to read as follows:

**Authority:** Sec. 2, Pub. L. 93-445, 88 Stat. 1312-1319 (45 U.S.C. 231a), unless otherwise noted. Subpart J also issued under sec. 1, Pub. L. 93-445, 88 Stat. 1311 (45 U.S.C. 231). Sec. 7, Pub. L. 93-445, 88 Stat. 1339 (45 U.S.C. 231f).

d. The authority citation for Part 217 continues to read as follows:

**Authority:** Sec. 5, Pub. L. 93-445, 88 Stat. 1332 (45 U.S.C. 231d), sec. 7, Pub. L. 93-445, 88 Stat. 1339 (45 U.S.C. 231f).

e. The authority citation for Part 230 continues to read as follows:

**Authority:** Secs. 2, 10, 50 Stat. 309, as amended, 314, as amended; 45 U.S.C. 228b, 228j.

f. The authority citation for Part 234 continues to read as follows:

**Authority:** 45 U.S.C. 231f.

g. The authority citation for Part 260 continues to read as follows:

**Authority:** Sec. 7(b)(5), Pub. L. 93-445, 88 Stat. 1339 (45 U.S.C. 231f(b)(5)); sec. 8, Pub. L. 93-445, 88 Stat. 1341 (45 U.S.C. 231g); sec. 5(f), Pub. L. 75-722, 52 Stat. 1100 (45 U.S.C. 355(f)).

h. The authority citation for Part 266 continues to read as follows:

**Authority:** Sec. 10, 50 Stat. 314, as amended, sec. 19, 56 Stat. 207; 45 U.S.C. 228j, 228s.

i. The authority citation for Part 320 continues to read as follows:

**Authority:** Sec. 12, 52 Stat. 1107, as amended; 45 U.S.C. 362, unless otherwise noted.

j. The authority citation for Part 322 continues to read as follows:

**Authority:** 45 U.S.C. 3621.

k. The authority citation for Part 325 continues to read as follows:

**Authority:** Sec. 12, 52 Stat. 1107, as amended; 45 U.S.C. 362.

l. The authority citation for Part 330 continues to read as follows:

**Authority:** Sec. 12, 52 Stat. 1107, as amended; 45 U.S.C. 362.

m. The authority citation for Part 335 continues to read as follows:

**Authority:** Sec. 12, 52 Stat. 1107, as amended, secs. 1, 2, 5, 52 Stat. 1094, 1096, 1099, as amended; 45 U.S.C. 362, 351, 352, 355.

n. The authority citation for Part 341 continues to read as follows:

**Authority:** Sec. 323, Pub. L. 79-572, 60 Stat. 740, 741; 45 U.S.C. 362(o).

o. The authority citation for Part 345 continues to read as follows:

**Authority:** Sec. 12, 52 Stat. 1107, as amended; 45 U.S.C. 362, Interpret or apply sec. 8, 52 Stat. 1102, as amended; 45 U.S.C. 358, unless otherwise noted.

## PART 209—[AMENDED]

1. Section 209.2 is amended by adding the following language after the last sentence in the section:

**§ 209.2 [Amended]**

* * * * *

(Approved by the Office of Management and Budget under control number 3220-0089)

## PART 210—[AMENDED]

2. Section 210.7 is amended by adding the following language after the last sentence in the section:

**§ 210.7 [Amended]**

* * * * *

(Approved by the Office of Management and Budget under control numbers 3220-0003 and 3220-0008)

## PART 216—[AMENDED]

3. Section 216.7 is amended by adding the following language after the last sentence in the section:

**§ 216.7 [Amended]**

* * * * *

(The information collection requirements contained in paragraph (c) were approved by the Office of Management and Budget under control number 3220–0002.)

4. Section 216.9 is amended by adding the following language after the last sentence in the section:

**§ 216.9 [Amended]**

* * * * *

(The information collection requirements contained in paragraph (b) were approved by the Office of Management and Budget under control number 3220–0016.)

5. Section 216.21 is amended by adding the following language after the last sentence in the section:

**§ 216.21 [Amended]**

* * * * *

(Approved by the Office of Management and Budget under control numbers 3220–0016 and 3220–0042)

6. Section 216.31 is amended by adding the following language after the last sentence in the section:

**§ 216.31 [Amended]**

* * * * *

(Approved by the Office of Management and Budget under control number 3220–0030)

7. Section 216.47 is amended by adding the following language after the last sentence in the section:

**§ 216.47 [Amended]**

* * * * *

(Approved by the Office of Management and Budget under control number 3220–0030)

8. Section 216.71 is amended by adding the following language after the last sentence in the section:

**§ 216.71 [Amended]**

* * * * *

(Approved by the Office of Management and Budget under control number 3220–0030)

## PART 217—[AMENDED]

9. Section 217.3 is amended by adding the following language after the last sentence in the section:

**§ 217.3 [Amended]**

* * * * *

(Approved by the Office of Management and Budget under control numbers 3220–0030, 3220–0031 and 3220–0042)

10. Section 217.5 is amended by adding the following language after the last sentence in the section:

**§ 217.5 [Amended]**

* * * * *

(Approved by the Office of Management and Budget under control number 3220–0002)

11. Section 217.10 is amended by adding the following language after the last sentence in the section:

**§ 217.10 [Amended]**

* * * * *

(Approved by the Office of Management and Budget under control numbers 3220–0031 and 3220–0032)

## PART 230—[AMENDED]

12. Section 230.3 is amended by adding the following language after the last sentence in the section:

**§ 230.3 [Amended]**

* * * * *

(Approved by the Office of Management and Budget under control number 3220–0073)

## PART 234—[AMENDED]

13. Section 234.10 is amended by adding the following language after the last sentence in the section:

**§ 234.10 [Amended]**

* * * * *

(Approved by the Office of Management and Budget under control number 3220–0031)

14. Section 234.30 is amended by revising the following language appearing after the last sentence in the section:

**§ 234.30 [Amended]**

* * * * *

(Approved by the Office of Management and Budget under control numbers 3220–0031 and 3220–0032 and 3220–0042)

## PART 260—[AMENDED]

15. Section 260.5 is amended by adding the following language after the last sentence in the section:

**§ 260.5 [Amended]**

* * * * *

(The information collection requirements contained in paragraph (b) were approved by the Office of Management and Budget under control number 3220–0007.)

16. Section 260.9 is amended by adding the following language after the last sentence in the section:

**§ 260.9 [Amended]**

* * * * *

(The information collection requirements contained in paragraph (b) were approved by the Office of Management and Budget under control number 3220–0007.)

## PART 266—[AMENDED]

17. Section 266.12 is amended by revising the OMB control number statement which appears at the conclusion of this section as follows:

**§ 266.12 [Amended]**

* * * * *

(Approved by the Office of Management and Budget under control numbers 3220–0052 and 3220–0151)

## PART 320—[AMENDED]

18. Section 320.39 is amended by adding the following language after the last sentence in the section:

**§ 320.39 [Amended]**

* * * * *

(Approved by the Office of Management and Budget under control number 3220–0020)

## PART 322—[AMENDED]

19. Section 322.4 is amended by adding the following language after the last sentence in the section:

**§ 322.4 [Amended]**

* * * * *

(Approved by the Office of Management and Budget under control number 3220–0049)

## PART 325—[AMENDED]

20. Section 325.12 is amended by adding the following language after the last sentence in the section:

**§ 325.12 [Amended]**

* * * * *

(The information collection requirements contained in paragraph (b) were approved by the Office of Management and Budget under control number 3220–0022.)

21. Section 325.13 is amended by adding the following language after the last sentence in the section:

**§ 325.13 [Amended]**

* * * * *

(Approved by the Office of Management and Budget under control numbers 3220–0022, 3220–0025 and 3220–0057)

## PART 330—[AMENDED]

22. Section 330.4 is amended by adding the following language after the last sentence in the section:

**§ 330.4 [Amended]**

* * * * *

(Approved by the Office of Management and Budget under control number 3220–0097)

## PART 335—[AMENDED]

23. Section 335.102 is amended by adding the following language after the last sentence in the section:

**§ 335.102 [Amended]**

* * * * *

(Approved by the Office of Management and Budget under control numbers 3220–0025, 3220–0034 and 3220–0039)

24. Section 335.103 is amended by adding the following language after the last sentence in the section:

**§ 335.103 [Amended]**

* * * * *

(Approved by the Office of Management and Budget under control numbers 3220–0039, 3220–0045 and 3220–0124)

25. Section 335.104 is amended by adding the following language after the last sentence in the section:

**§ 335.104 [Amended]**

* * * * *

(The information collection requirements contained in paragraphs (b) and (c) were approved by the Office of Management and Budget under control number 3220–0039.)

26. Section 335.202 is amended by adding the following language after the last sentence in the section:

**§ 335.202 [Amended]**

* * * * *

(Approved by the Office of Management and Budget under control number 3220–0039)

**PART 341—[AMENDED]**

27. Section 341.4 is amended by adding the following language after the last sentence in the section:

**§ 341.4 [Amended]**

* * * * *

(Approved by the Office of Management and Budget under control number 3220–0036)

**PART 345—[AMENDED]**

28. Section 345.4 is amended by adding the following language after the last sentence in the section:

**§ 345.4 [Amended]**

* * * * *

(Approved by the Office of Management and Budget under control number 3220–0008)

29. Section 345.5 is amended by adding the following language after the last sentence in the section:

**§ 345.5 [Amended]**

* * * * *

(Approved by the Office of Management and Budget under control number 3220–0012)

30. Section 345.6 is amended by adding the following language after the last sentence in the section:

**§ 345.6 [Amended]**

* * * * *

(Approved by the Office of Management and Budget under control number 3220–0012)

31. Section 345.8 is amended by adding the following language after the last sentence in the section:

**§ 345.8 [Amended]**

* * * * *

(Approved by the Office of Management and Budget under control number 3220–0012)

Dated: March 27, 1987.

By Authority of the Board.

For the Board.

**Beatrice Ezerski,**

*Secretary to the Board.*

[FR Doc. 87–7359 Filed 4–3–87; 8:45 am]

BILLING CODE 7905-01-M

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[5] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[6] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[7] No amendments to this volume were promulgated during the period Oct. 1, 1985 to Sept. 30, 1986. The CFR volume issued as of Oct. 1, 1985 should be retained.

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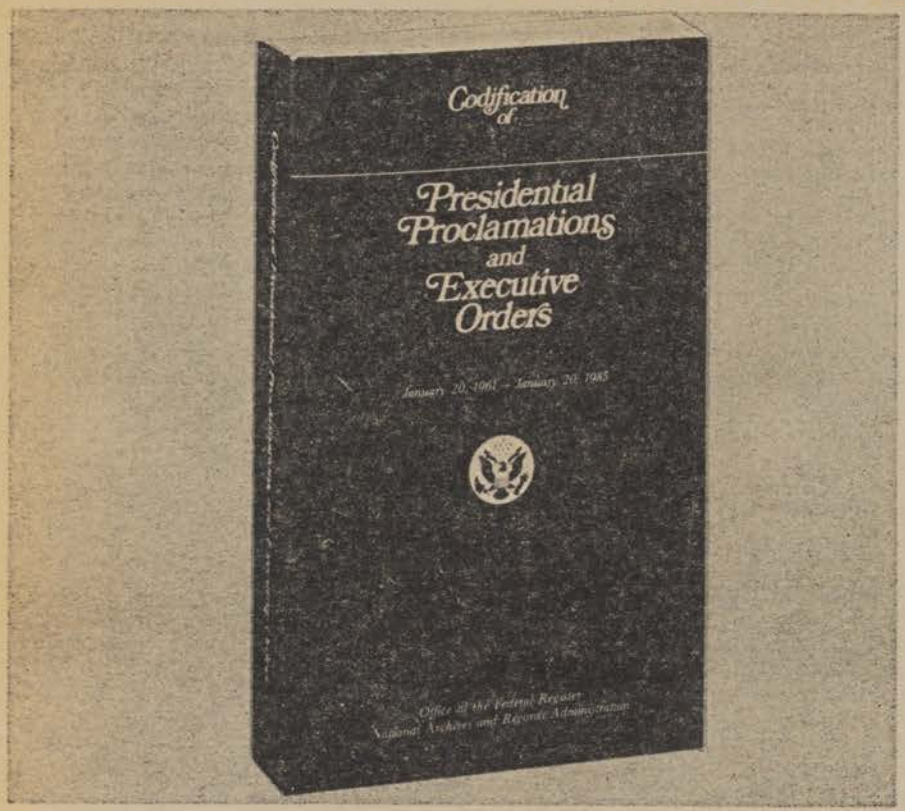


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